

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LANDMARK LEGAL FOUNDATION

Plaintiff,

v.

**ENVIRONMENTAL PROTECTION
AGENCY,**

Defendant.

Civil Action No. 12-1726 (RCL)

**REPLY MEMORANDUM IN FURTHER SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

The Defendant, United States Environmental Protection Agency (EPA), by and through counsel, hereby Replies to Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment. Plaintiff brought this action pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, requesting (1) records identifying communications with outside groups and individuals relating to proposed rules that had not been finalized by the EPA between January 1, 2012 and August 17, 2012; and (2) records indicating that the issuance of regulations were slowed or delayed until after November 2012 or the presidential elections of 2012. See Exhibit 1, Plf’s Complaint. To respond to this request, the EPA undertook a comprehensive search and processed over 9,100 potentially responsive documents.

ARGUMENT

I. EPA CONDUCTED A THOROUGH SEARCH REASONABLY CALCULATED TO UNCOVER ALL RECORDS RESPONSIVE TO PLAINTIFF'S FOIA REQUEST

As the Wachter Declarations establish, the EPA's search method was reasonably calculated to uncover all records in the relevant component offices that were responsive to Plaintiff's FOIA request. Notwithstanding, Plaintiff questions the adequacy of EPA's search of the Administrator's office, the description of EPA's record systems, and the application of FOIA Exemptions 5 and 6. These allegations are without merit and should not preclude the Agency's success on its motion for summary judgment. As demonstrated below, the EPA satisfied its obligation to conduct an adequate search for records responsive to Plaintiff's FOIA request and properly withheld portions of responsive records pursuant to FOIA Exemptions 5, and 6.

A. The EPA Searched All Program Offices Reasonably Likely to Have Responsive Records

Under the FOIA, an agency must undertake a search that is "reasonably calculated to uncover all relevant documents." *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983); *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (internal quotation marks omitted); see *Oglesby v. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) ("[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested."). A search is not inadequate merely because it failed to "uncover[] every document extant." *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991); see *Judicial Watch v. Rossotti*, 285 F. Supp. 2d 17, 26 (D.D.C. 2003) ("[p]erfection is not the standard by which the reasonableness of a FOIA search is measured"). Rather, a search is inadequate only if

the agency fails to “show, with reasonable detail, that the search method . . . was reasonably calculated to uncover all relevant documents.” *Oglesby*, 920 F.2d at 68.

Once an agency demonstrates the adequacy of its search, the agency’s position can be rebutted “only by showing that the agency’s search was not made in good faith.” *Maynard v. C.I.A.*, 986 F.2d 547, 560 (1st Cir. 1993). In the instant case, the Plaintiff has no basis to assert bad faith with respect to the EPA’s search or to imply that documents were destroyed. A supplemental search of the Administrator’s Office revealed 4,500 additional documents to be reviewed and processed by EPA. Supplemental Declaration of Eric E. Wachter, (Exhibit G) ¶ 23. “It is hardly a sign of bad faith to acknowledge an error, particularly where, as here, the defendant promptly takes steps to correct the error.” *Sheffield v. Holder*, No. 12-1008, 2013 WL 3216059 (D.D.C. June 27, 2013).

Furthermore, the EPA has issued a preservation notice for records related to this case, and Mr. Wachter has testified that he understands and has instructed his staff to comply with the preservation notice, thus militating against any potential destruction or spoliation of records. Exhibit (Exh.) G ¶ 31-33. Finally, the EPA issued an agency-wide policy requiring the maintenance and preservation of electronically stored information subject to litigation holds, which would include the information from the former Administrator responsive to this request. *Id.* at 32. Thus Plaintiff’s assertions of potential document destruction are merely hypothetical. Hypothetical assertions are insufficient to raise a material question of fact with respect to the adequacy of an agency’s search. *Oglesby*, 920 F.2d at 67 n.13.

“Agency affidavits enjoy a presumption of good faith that withstands purely speculative claims about the existence and discoverability of other documents.” *Chamberlain v. U.S. Dep’t of Justice*, 957 F. Supp. 292, 294 (D.D.C. 1997), *aff’d*, 124 F.3d 1309 (D.C. Cir. 1997). In

addition, the Wachter declarations identify the search methodology that was used, the files searched, the scope of the search and the personnel who conducted the search, unlike the declaration in *People for the American Way Foundation v. National Park Service*, 503 F. Supp. 2d 284, 294 (D.D.C. 2007), which “neither identified what search terms were used, nor . . . why the scope of defendant’s search was limited to the files or personnel listed,” and the declaration in *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 91-92 (D.D.C. 2009), which simply stated which searches were performed. As both of the Wachter Declarations establish, the EPA’s search method was reasonably calculated to uncover all agency records in the relevant program offices that were responsive to Plaintiff’s FOIA request.

Plaintiff next alleges that the EPA’s interpretation of the narrowing of scope represents “bad faith.” But this allegation is also contrary to the facts on the record. Because of the broad nature of the Plaintiff’s request, the EPA contacted Plaintiff’s counsel to discuss the complexity of the request and options for narrowing its scope. Exh. G ¶ 8. This discussion was thought to be necessary because the request, as written, could apply to more than 17,000 EPA employees, located at headquarters and at the regional offices. *Id.* On October 5, 2012, the parties agreed via email that the request would be narrowed to “senior officials” in the EPA’s Headquarters offices, with senior officials being identified as Program Administrators, Deputy Administrators and Chiefs of Staff in the EPA’s Headquarters offices. Although the wording of the narrowed scope of the request did not explicitly state the Office of the Administrator, EPA has always interpreted the narrowed scope of the request to include the Administrator, Deputy Administrator, and Chief of Staff in the Office of the Administrator. *Id.*, at ¶ 9. EPA did not omit those offices from its initial search. *Id.*; Initial Declaration of Eric Wachter at ¶ 11. The Administrator, Deputy Administrator and Chief of Staff in the Office of the Administrator were

all included under the definition of “Program Administrators, Deputy Administrators and Chiefs of Staff.” *Id.*

Plaintiff’s mere assertions are not sufficient evidence of bad faith. *Wolf v. CIA*, 569 F. Supp. 2d 1, 10 (D.D.C. 2008). Plaintiff has failed to establish that the Agency acted in bad faith with regard to the interpretation of the scope of the request and the search for records responsive to its request.

The EPA’s Search for Responsive Records.

EPA determined that responsive documents may be located within the immediate office of the Office of the Administrator.¹ It also determined that responsive documents may be located in the offices of the Assistant Administrators, Deputy Assistant Administrators, and Chiefs of Staff in the EPA Headquarters offices, as well as in the offices of the Associate Administrator and Deputy Associate Administrator in the EPA’s Office of Policy (“OP”). Exh. G ¶ 14. The OP is the primary EPA office that works to support Agency priorities and enhance decision making through analytic skills, management support, and special expertise in four areas: regulatory policy and management, environmental economics, strategic environmental management, and sustainable communities. *Id.* The search for responsive documents also included the General Counsel and Deputy General Counsels in the EPA’s Office of General Counsel (“OGC”). The OGC provides legal support for developing and defending the Agency’s rules, adjudications, and policies and advising as to legislation. *Id.* Five of the headquarters’ program offices were not likely to have responsive documents as those offices do not ordinarily engage in the Agency’s rulemaking activities. *See* Initial Declaration of Eric Wachter, ¶15,

¹ Offices within the EPA Headquarters are referred to as “program offices.” “Program offices” refer to headquarters offices other than the Office of the Administrator and the Office of the Inspector General. The offices of the senior officials within each program office are referred to as the “immediate offices” for that program. The offices of senior officials such as the Administrator and Deputy Administrator in the Office of the Administrator are referred to as the “Immediate office” of the Office of the Administrator. Exh. G, ¶11.

attached to Def's MSJ.² *See Citizens For Responsibility and Ethics in Washington v. Nat'l Indian Gaming Comm'n*, 467 F. Supp. 2d 40, 54-55 (D.D.C. 2006) (concluding that agency logically did not search a particular division given that the files in that division would not have been responsive to the FOIA request at issue). Plaintiff did not challenge this conclusion.

On October 23, 2012 an electronic mail message was sent by the Office of the Executive Secretariat (OEX) to the designated FOIA Coordinators for each of the EPA's headquarters offices, with the exception of the Office of the Administrator, in order to initiate the search. Exh. G, ¶15. The electronic mail message was not sent to the office of the Administrator because the individual within OEX who was responsible for sending the email was also the designated FOIA Coordinator for the Office of the Administrator and is responsible for coordinating searches for responsive records from the Office of the Administrator. Exh. G, ¶ 12, 15. However, On November 14, 2012, the Office of the Administrator was contacted directly to initiate the search for documents responsive to this request. Exh. G, ¶ 17.

FOIA Coordinators route requests to the appropriate program office or subject matter expert within the program; track FOIA requests for timeliness; direct FOIA requests to the individuals in the program offices who are likely to have responsive records; monitor the quality of the responses; and provide guidance to program personnel. Exh. G, ¶ 12. Each Headquarters' Program Office has a lead FOIA coordinator, who works under the general direction of the National FOIA Officer (NFO). *Id.*

In order to process and collect responsive documents, technical staff in OEX created an electronic database using the agency's Lotus Notes software for individuals to use to upload

² Those offices that were not likely to have responsive documents are: the Office of Administration and Resources management (OARM), the Office of Environmental Information (OEI), the Office of Research and Development (ORD), the Office of the Chief Financial Officer (OCFO), and the Office of International and Tribal Affairs (OITA). Initial Declaration of Eric Wachter, ¶ 15, attached to Def's MSJ.

responsive electronic records. On October 25, 2012, OEX provided a link to a records collection database and instructed individuals to upload potentially responsive information into the database. OEX instructed individuals to search based on the overall request as well as by key words. Exh. G, ¶ 16.

Due to the broad and unfocused nature of the request, program offices were instructed to search based on the request rather than strictly by key words. This was because precise key words could not be readily developed that would be narrowly tailored to find documents responsive to the plaintiff's request, as the request was not focused on a particular topic, rule, third party, or other issue amenable to a search limited by key words. Each headquarters office was individually responsible for uploading their responsive documents to the collection database. Exh. G, ¶ 16.

Initial Request for Responsive Documents - Office of the Administrator

On November 14, 2012, Aaron Dickerson and Nena Shaw in the Office of the Administrator were sent both the instructions that were sent to the FOIA coordinators for the other program offices and the link to the collection database. This communication instructed Mr. Dickerson and Ms. Shaw to search for records responsive to the request from the email accounts of the Administrator and Deputy Administrator and to upload any responsive records into the collection database. Exh. G, ¶ 17.

As of January 25, 2013, the EPA had completed its initial search for records responsive to this FOIA request and identified more than 4,600 potentially responsive documents. OEX staff and OGC staff then reviewed and processed these documents for responsiveness to Plaintiff's FOIA request and for any applicable privileges. Records were deemed to be responsive to the Plaintiff's FOIA request if they either 1) memorialized a meeting,

communication with, or contact with an outside party related to a rule that was proposed, but not finalized, during the time frame identified by Plaintiff (not including standard interagency review of proposed rules or formal comments on rulemaking dockets) or 2) internal or external records from any party that discussed or memorialized discussions of delaying a rulemaking until after the election of 2012 or after November 2012 for political reasons. Exh. G, ¶ 19. Thereafter, OEX staff and OGC staff evaluated each record determined to be responsive to this FOIA request for segregability of non-exempt material. Exh. G, ¶ 20.

As part of finalizing the documents to meet the Court's April 30, 2013 filing deadline, OEX carefully reviewed the document search that was performed between October 23, 2012 and January 25, 2013. In the course of this review, on April 29, 2013, OEX determined that the search for documents from the former Administrator, the Deputy Administrator, and the Chief of Staff in the Office of the Administrator may have been insufficient. In the interest of a complete and adequate response to Plaintiff's request, EPA determined that another search would be required of the accounts of the former Administrator, Deputy Administrator, and Chief of Staff in the Office of the Administrator. The EPA immediately notified plaintiff and the Court of this deficiency and the fact that there would be a number of additional documents that may potentially be responsive to the Plaintiff's request. Exh. G, ¶ 21.

Staff in the Office of the Administrator were instructed by electronic mail to immediately complete a new search of the accounts of the former Administrator, Deputy Administrator, and Chief of Staff using the keywords "draft or proposed" within the same sentence as "rule, regulation, or guidance" for the time period of January 1, 2012, to August 21, 2012. This very broad and over-inclusive search was to verify that all documents related to a draft or proposed

rule were collected so that they could be reviewed by OEX and OGC staff to determine which of these documents were actually responsive to plaintiff's request. Exh. G, ¶ 22.

In addition to the 4,600 documents that were initially identified as potentially responsive, approximately 4,500 additional documents were found during the time period of April 30, 2013 to May 3, 2013, in the Office of the Administrator from the files of the former Administrator, Deputy Administrator, and Chief of Staff. These additional potentially responsive documents were documents that contained the broad key words "draft or proposed" within the same sentence as "rule, regulation, or, guidance." OEX staff and OGC staff then reviewed and processed these documents for responsiveness to Plaintiff's FOIA request and for any applicable exemptions. With the addition of these 4,500 additional documents, more than 9,100 potentially responsive documents from across the agency were reviewed and processed by OEX and OGC staff in order to process Plaintiff's FOIA request. Exh. G, ¶ 23. OEX staff and OGC staff also evaluated each additional record responsive to this FOIA request for segregability of non-exempt material. Exh. G, ¶ 24.

Filing System and Files Subject to Search.

OEX instructed individuals to search based on the overall request, which was for records of "communications of any kind relating to all proposed rules and regulations that have not been finalized by the EPA between January 1, 2012 and August 17, 2012" and for "records indicating an order, direction, or suggestion that the issuance of regulations, the announcements of regulations and/or public comment of regulations should be slowed or delayed until after November 2012 or the presidential elections of 2012." Each headquarters office was individually responsible for uploading their responsive documents to the collection database. Exh. G, ¶ 25.

Documents uploaded into the database for processing and review as of May 15, 2013 included the following:

a. *Internal Lotus Notes Email System.* During the time period of January 2012 to August 2012, which is the time period specified in Plaintiff's FOIA request, the EPA used Lotus Notes as its exclusive email application throughout the Agency. The Lotus Notes email application allows users to search for responsive records in all folders contained in mail servers and archived servers, and then upload the potentially responsive records into collection databases. *Id.*

b. *Lotus Notes Email Messages Received from Outside Parties or Non-Agency Accounts.* Messages received from outside parties or outside email accounts to EPA email accounts during the time period of this request are contained in these EPA mail servers and archived servers. Responsive communications with outside parties were searched for and located as part of the search for records responsive to this request. The EPA provided responsive records to Plaintiff containing communications with outside parties. Exhibit B attached to Exhibit G – Wachter Supp. Decl., contains examples of records of communications to and from outside parties with the EPA. Many of these documents were released in full to Plaintiff and were therefore not numbered or referenced on the EPA's *Vaughn* Index. Document EPA – 32, containing an unsolicited email communication received by then-Deputy Administrator Bob Perciasepe, is another example of an email communication from an outside account. This communication was forwarded to Mr. Perciasepe's executive assistant, Teri Porterfield, and was located in the EPA's Lotus Notes email system as part of EPA's search for responsive records. *Id.*

c. *Lotus Notes Email Records from the Secondary Account of Former Administrator Lisa P. Jackson.* Because the widespread use of email has become commonplace, EPA Administrators have been assigned two email accounts: a primary account and a secondary

account. The email address for Administrator Jackson's primary account was posted on the EPA's website and was used by hundreds of thousands of Americans to send messages to the Administrator. This account was maintained and monitored by staff, and the emails were processed as official correspondence as appropriate. The secondary account was an everyday, working email account of the Administrator to communicate with staff and other government officials. This secondary email account was used for practical purposes. Given the large volume of emails sent to the primary account – more than 1.5 million in fiscal year 2012, for instance – the secondary email account was necessary for effective management and communication between the Administrator and colleagues. *Id.*

In accordance with the EPA's practice for responding to FOIA requests for documents from the email account of the Administrator, the EPA searched this secondary account and provided responsive records from this secondary account. OEX is aware of no other secondary EPA email accounts of senior officials within the Agency during the time period of Plaintiff's request. *Id.*

d. *Calendar Entries memorializing meetings with outside parties.* Calendar entries on the EPA's official calendars are also contained in the Lotus Notes application. EPA provided records of calendar entries memorializing meetings with outside parties related to rules that were proposed but not finalized during the time period covered by Plaintiff's FOIA request. Exhibit C, attached to Exhibit G – Wachter Supp. Decl., contains examples of these calendar entries that were provided to Plaintiff. *Id.*

e. *Electronic Attachments to Email Files.* Many of the documents uploaded into the database contained attachments to email files in the form of Microsoft Word documents, Adobe Acrobat .PDF form documents, and Microsoft Excel spreadsheets. These attachments were also

reviewed for responsiveness to Plaintiff's FOIA request and for any applicable exemptions. Many responsive records contained attachments which included memoranda, internal planning documents, drafts of correspondence, and final correspondence related to rules proposed but not finalized during the time period of Plaintiff's request. *Id.*

f. *Correspondence from the EPA's Correspondence Management System ("CMS") contained in "Daily Reading Files."* The EPA also provided outside correspondence that was received by the EPA and reviewed by senior managers from the EPA's Correspondence Management System ("CMS"). EPA senior managers, including the Administrator and Deputy Administrator, do not directly review correspondence received in the CMS. Instead, staff in OEX prepare "Daily Reading Files" of correspondence for senior managers to review. OEX determined that these "Daily Reading Files" prepared by staff were the records likely to have information responsive to the narrowed scope of Plaintiff's request. The EPA provided the pages and correspondence from Daily Reading Files responsive to Plaintiff's request. Exhibit D attached to Exhibit G- Wachter Supp. Decl., provides examples of these Daily Reading Files, which include responsive correspondence from the CMS system. *Id.*

The records described above constitute the records likely to contain responsive information to Plaintiff's request for records of "communications of any kind relating to all proposed rules and regulations that have not been finalized by the EPA between January 1, 2012 and August 17, 2012" and for "records indicating an order, direction, or suggestion that the issuance of regulations, the announcements of regulations and/or public comment of regulations should be slowed or delayed until after November 2012 or the presidential elections of 2012." Therefore, as of May 15, 2013, EPA had determined that all locations reasonably likely to contain responsive records had been searched. Exh. G, ¶ 26.

Despite the Agency's explanation of its search for responsive records, Plaintiff further cites to inadmissible hearsay in the form of news articles and blog postings to allege that its "concerns" regarding the adequacy of the search prove that the search was inadequate. These concerns are premised on the use of a secondary email account by former Administrator Lisa Jackson and the presence of an email communication from an outside party to the personal email account of an agency official. Pl. Response to MSJ at 17-18. As EPA has explained in detail, the EPA searched the secondary account of former Administrator Jackson and provided responsive records from this secondary account. The agency also searched for and produced responsive documents from outside parties and accounts that were in its possession and control. Supp. Declaration at P. 25(b) and attached Exhibit B.

As the Wachter Declarations and attached exhibits demonstrate, the agency searched for all records responsive to Plaintiff's request that were in its custody and control, and thus met its obligations to conduct a reasonable search for responsive records under FOIA.

II. THE EPA'S WITHHOLDINGS WERE APPROPRIATE

A. EPA Properly Withheld Predecisional Deliberations

As a threshold matter, Plaintiff argues that the Wachter Declaration and the *Vaughn* indices insufficiently justify the bases for the EPA's application of Exemption 5 deliberative process privilege because they purportedly lack detail as to the basis for withholding for each particular document. Courts have repeatedly held that the purpose of a *Vaughn* index is to permit "a meaningful *de novo* review of the agency's claim of an exemption," and as long as an agency satisfies its burden, there is no requirement that it provide an index on which each record is separately listed. *Brown v. F.B.I.*, 675 F. Supp. 2d 122, 130 (D.D.C. 2009); *Voinche v. FBI*,

412 F. Supp. 2d 60, 65 (D.D.C. 2006) (citing *Gallant v. NLRB*, 26 F.3d 168, 172-73 (D.C. Cir. 1994)).

Here, the level of detail that the EPA provided on each of the withheld documents stands in sharp contrast to the declaration which “completely lack[ed] any detail regarding any particular record” and was rejected in *Cuban v. Securities & Exchange Comm’n*, 744 F. Supp. 2d 60, 77 (D.D.C. 2010), *vacated in part on reconsideration*, 795 F. Supp. 2d 43, 52-53 (D.D.C. 2011). Further, EPA’s *Vaughn* index provided detailed descriptions of each of the documents withheld in full or in part, and the basis for withholding.

The EPA withheld approximately 399 documents, in full or in part, from disclosure under FOIA Exemption 5 and the deliberative process privilege. The documents withheld under the deliberative process privilege and FOIA Exemption 5 comprise email chain discussions, draft versions of documents, briefing materials, and internal briefing memoranda that pertain to a myriad of EPA decision-making processes related to rulemaking and proposed rules. The *Vaughn* index provides a detailed description of each document or portion of a document withheld under the deliberative process privilege and FOIA Exemption 5. Exh. G, ¶ 27; *See Vaughn Index*, Exhibit A to EPA Motion for Summary Judgment.

All records withheld under the deliberative process privilege and Exemption 5 of FOIA were created prior to the finalization of Agency decisions and comprised of intra- or interagency records. *See* Exh G ¶ 29 and *Vaughn Index*. The withheld records were prepared in connection with developing Agency rulemaking actions that, by the terms of Plaintiff’s FOIA request, were not final at the time that the records were prepared. Therefore these records are pre-decisional intra- and interagency records generally developed as part of the Agency’s decision-making process related to proposed rules and proposed rulemaking. Specifically, with regard to

document EPA-421, the document discusses potential issues with the application of a rule known as the greenhouse gas tailoring rule to a facility and lays out several pre-decisional options for consideration related to the potential application of this rule. Exh. G, ¶ 29. A similar level of detail regarding pre-decisional deliberations is provided throughout the Agency's *Vaughn* index. Therefore the Agency's use of Exemption 5 should be upheld.

B. EPA Properly Withheld Information Pursuant to Exemption (b)(6)

The Plaintiff complains that EPA is withholding email addresses of employees within the Executive Office of the president. Exhibit E, attached hereto, sets forth documents EPA-296, EPA-297, EPA-298, EPA-299 and EPA-301, as examples of how EPA withheld official email addresses of the Executive Office of the President under Exemption 6. Exemption 6 requires the agency to balance the individual's right to privacy against the public's interest in disclosure. *See Dep't of Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reedy v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). "The privacy interest protected by Exemption 6, 'encompass[es] the individual's control of information concerning his or her person.'" *U.S. Dep't of Defense v. FLRA*, 510 U.S. 487, 500 (1994) (quoting *U.S. Dep't of Justice v. Reporters Comm.*, 489 U.S. 749, 763 (1989)). In contrast, "the only relevant public interest in the [Exemption 6] balancing analysis [is] the extent to which disclosure of the information sought would 'shed light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'" *Id.* at 497 (quoting *Reporters Comm.*, 489 U.S. at 773). It is the requester's obligation to identify a cognizable public interest. Absent the requester's identification of a public interest, "the balancing requirement does not come into play." *Griffin v. Exec. Office for US. Attorneys*, 774 F. Supp. 2d 322, 327 (D.D.C. 2011) (citing *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 175 (2004)). Thus, "[i]n the absence of any public

interest in disclosure, any countervailing interest in privacy defeats a FOIA request.” *Oguaju v. United States*, 288 F.3d at 451 (citing *Nat’l Ass’n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989) (“[S]omething ... outweighs nothing every time”)).

The staff members of the Executive Office of the President have a significant personal interest in preventing unsolicited emails and harassment. The email addresses are used for internal messages to and from the Executive Office of the President to prevent unsolicited communications. Since the owners’ names are already disclosed, public disclosure of these email addresses would not shed light on the performance of the employees’ official duties. As Exhibit E demonstrates, when EPA withheld email addresses under Exemption 6, the Agency also provided the email owner’s name in the redaction or the redaction directly followed the owner’s name. Exh. G, ¶ 30. On the other hand, Plaintiff has failed to put forth any public interest whatsoever in releasing this type of information. Accordingly, Defendant’s Motion for Summary Judgment as to Exemption 6 should be granted.

III. DISCOVERY IN FOIA CASES IS ONLY APPROPRIATE UPON A SHOWING OF BAD FAITH REGARDING THE AGENCY’S DECLARATION.

Discovery in civil actions is governed by the Federal Rules of Civil Procedure, along with the Court’s Local Rules. In this Court, the Local Rules explicitly exempt FOIA actions from the otherwise automatic opening of discovery. *See* LCVR 16.3(b)(9) (exempting FOIA actions from both pretrial conference and discovery planning requirement); 26.2(a)(9) (exempting FOIA actions from initial disclosure requirements of Rule 26(a)(1)).

Local Rule 26.2(a) makes express that discovery may not occur in these excluded cases except by court order or by consent of the parties:
 Except in categories of proceedings exempted from initial disclosures under Rule 26(a)(1)(E), F.R.Civ.P., or when authorized under these rules or by order or agreement of the parties, a party *may not seek discovery* from any sources before the parties have conferred as required by Rule 26(f), F.R.Civ.P.

LCVR 26.2(a) (emphasis added). None of the exceptions in this provision apply here and, because the parties have not had the Rule 26(f) conference, the Local Rules provide that Plaintiff may not seek discovery at this time.

The commentary to Local Civil Rule 16.3(b) explains that FOIA actions were included in the list of exempted actions because “they are actions that typically do not require discovery . . . A significant portion of the nation’s FOIA actions are pending in this court.” Thus, it is clear that the Court consciously designed the Local Civil Rules to operate this way in FOIA cases.

In addition, district courts traditionally rely on summary judgment motions to resolve FOIA claims. *See, e.g., Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir 2007). In doing so, the courts generally accord the agency’s declarations substantial weight as long as they are made in good faith, reasonably detailed, and not contradicted by other competent evidence in the record. *See, e.g., Assassination Archives & Research Ctr. v. CIA*, 178 F. Supp. 2d 1, 8 (D.D.C. 2001), *aff’d*, 334 F.3d 55 (D.C. Cir. 2003).

As explained by this Court, it is also well established that discovery is rare in FOIA cases:

“Discovery is generally unavailable in FOIA actions.” *Wheeler v. CIA*, 271 F. Supp. 2d 132, 139 (D.D.C.2003) (citing *Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 25 (D.D.C. 2000)). Discovery “should be denied where an agency’s declarations are reasonably detailed, submitted in good faith and the court is satisfied that no factual dispute remains.” *Schrecker v. Dep’t of Justice*, 217 F. Supp. 2d 29, 35 (D.D.C. 2002), cited with approval by *Baker & Hostetler LLP v. U.S. Dep’t of Commerce*, 473 F.3d 312, 318 (D.C. Cir. 2006). Where an agency’s declarations are deficient, “courts generally will request that an agency supplement its supporting declarations” rather than order discovery. *Hall*, 2000 U.S. Dist. LEXIS at *19. “Discovery may be appropriate when the plaintiff can raise sufficient question as to the agency’s good faith in processing or in its search.” *Exp.-Imp. Bank*, 108 F. Supp. 2d at 25 (citing *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 812 (2nd Cir. 1994)). However, the presumption of good faith that applies to agency affidavits is not “rebutted by ‘purely speculative claims about the existence and discoverability of other documents.’” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (quoting *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981)).

Wolf v. CIA, 569 F. Supp. 2d 1, 9-10 (D.D.C. 2008).

Accordingly, well established FOIA case law provides numerous reasons why the Court should block discovery at this point: First, the typical remedy for insufficient declarations is to order the agency to supplement the declaration, rather than permit discovery. Second, Plaintiff has made nothing remotely close to a showing of bad faith on behalf of the agency. In fact, Plaintiff admits that the Court should grant it limited discovery to “determine whether EPA has acted in bad faith. . .” Plf’s Opposition at p. 2. This falls far short of the showing that is necessary for the Court to allow discovery. Discovery to pursue an unsupported allegation, suspicion or a hunch is unwarranted. *Physicians Comm. for Responsible Med. v. Glickman*, 117 F. Supp. 2d 1, 4 (D.D.C. 2008).

Moreover, Plaintiff inexplicably asserts that EPA demonstrated bad faith in implementing “an agreement to narrow the scope of [the] search to EPA’s senior officials in the Washington D.C. headquarters. While any reasonable search would . . .include the two most senior political officials.” The Plaintiff then proceeds to speculate about spoliation of records during the five months that elapsed before those files were searched for responsive records. Plf’s Opp., at p. 2, 14. These arguments are groundless.

First, the argument is factually groundless because the agency has always interpreted the narrowed scope of the request to include the Administrator, Deputy Administrator and Chief of Staff in the Office of the Administrator. Exh. G, ¶ 9. EPA did not omit those offices from its initial search. *Id.*, see also, Initial Declaration of Eric Wachter attached to Def’s MSJ at ¶ 11. Second, following Administrator Jackson’s departure, the Office of the Administrator immediately retained and subsequently searched her records, including the secondary email account, as part of the supplemental search for records from the former Administrator, the

Deputy Administrator, and the Chief of Staff. No records were or have been deleted from these accounts during this five month period. Exh. G., ¶ 33.

Plaintiff essentially seeks to engage in a fishing expedition that runs contrary to the “general rule” that “discovery in FOIA actions is rare and should be denied where an agency’s declarations are reasonably detailed, submitted in good faith and the court is satisfied that no factual dispute remains.” *Shrecker v. United States Dep’t of Justice*, 217 F. Supp. 2d 29, 39 (D.D.C. 2002). Discovery should not be permitted when it “would only afford . . . [the plaintiff] an opportunity to pursue a bare hope of falling upon something that might impugn the affidavits.” *Military Audit Project v. Casey*, 656 F.2d 724, 751-52 (D.C. Cir. 1981). There is nothing about this case that distinguishes it from the long line of cases establishing that discovery is inappropriate under these circumstances. Accordingly, the Court should grant EPA’s request for summary judgment and deny Plaintiff’s request for discovery.

CONCLUSION

WHEREFORE, for all the reasons set forth above, the Defendant respectfully requests the Court to grant its motion for summary judgment and enter judgment in its favor.

Dated: July 24, 2013

Respectfully submitted,

RONALD C. MACHEN JR. DC BAR #447-889
United States Attorney
For the District of Columbia

DANIEL F. VAN HORN, D.C. BAR # 924092
Chief, Civil Division

/s/

By:

HEATHER D. GRAHAM-OLIVER
Assistant United States Attorney
Judiciary Center Building
555 4th St., N.W.
Washington, D.C. 20530
(202) 305-1334
heather.graham-oliver@usdoj.gov

Of Counsel:

Jennifer Hammitt
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel, General Law Office
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20210

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LANDMARK LEGAL FOUNDATION

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Defendant.

)
)
)
)
) Case No. 12-1726 (RCL)
)
)
)
)
)
)
)
)

**DEFENDANT’S REPLY TO PLAINTIFF’S
STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

Defendant, the United States Environmental Protection Agency (EPA), hereby submits this reply to Plaintiff’s Statement of Material Facts Not in Genuine Dispute. As set forth below, Plaintiff fails to create any genuine issue of material fact.

1. Admitted in part and disputed in part. The EPA admits that Landmark agreed to limit EPA’s search for responsive records to senior officials in EPA headquarters. The EPA does not assert that Landmark agreed to limit the scope of the FOIA request to “assistant administrators, deputy assistant administrators, and chiefs of staff in EPA headquarters offices as well as to the associate administrator and deputy associate administrator in EPA’s Office of Policy.” As explained by Eric Wachter, Director of the Office of the Executive Secretariat, the EPA did not limit the scope of the search to these offices. *See* Supp. Wachter Decl. at ¶¶9, 15. The EPA searched the records of the Administrator, Deputy Administrator, and Chief of Staff. Supp. Wachter Decl., Exh. G at ¶¶17, 21 – 24.

2. Not disputed. The EPA searched the records of the Administrator, Deputy Administrator, and Chief of Staff in response to this request. Supp. Wachter Decl., Exh. G at ¶¶17, 21 – 24.

3. Disputed. EPA sent an initial request for responsive documents from the Office of the Administrator as part of the initial search. Supp. Decl. at 17. Mr. Wachter has provided testimony under penalty of perjury regarding the instructions to search the Office of the Administrator. Supp. Wachter Decl., Exh. G at ¶17.

4. Disputed. EPA sent an initial request for responsive documents from the Office of the Administrator as part of the initial search. Supp. Decl., Exh. G at 17. Mr. Wachter has provided testimony under penalty of perjury regarding the instructions to search the Office of the Administrator. Supp. Wachter Decl., Exh. G at ¶17. In the interest of a complete and adequate response to Plaintiff's request, the EPA determined that another search would be required of the accounts of the former Administrator, Deputy Administrator, and Chief of Staff in the Office of the Administrator and conducted a supplemental search. Supp. Wachter Decl., Exh. G at ¶¶21 – 24.

5 - 6. Not disputed. Document EPA-32 contains an unsolicited email communication received by then-Deputy Administrator Bob Perciasepe. This communication was forwarded to Mr. Perciasepe's executive assistant, Teri Porterfield, and was located in the EPA's Lotus Notes email system as part of EPA's search for responsive records. Supp. Wachter Decl., Exh. G at ¶25(c).

7. Disputed. Plaintiff's statement that "[t]he declaration submitted by Eric E. Wachter does not indicate that any EPA official searched his/her personal email accounts for responsive records" is immaterial and does not raise a genuine issue of material fact in dispute.

Mr. Wachter has provided testimony under penalty of perjury regarding EPA's search for responsive records. Wachter Decl. at ¶¶11 – 13; Supp. Wachter Decl., Exh. G at ¶¶14 – 26.

8. Disputed. Plaintiff's statement that "declaration submitted by Eric E. Wachter does not indicate what filing system EPA employs, what files exist, what files were actually searched, or if searched, by whom" does not raise a genuine issue of material fact in dispute. Mr. Wachter has provided testimony under penalty of perjury regarding EPA's search for responsive records, EPA's filing system, and files subject to search. Wachter Decl. at ¶¶11 – 13; Supp. Wachter Decl., Exh. G at ¶¶14 – 25. Mr. Wachter has also testified that as of May 15, 2013, his office has determined that all locations reasonably likely to contain responsive records have been searched. Supp. Wachter Decl., Exh. G at ¶26.

9. Disputed. Plaintiff's bare assertion that "EPA appears to have limited its search for responsive records to email exchanges between EPA officials and attachments to these emails" does not raise a genuine issue of material fact in dispute. Mr. Wachter has provided testimony under penalty of perjury regarding EPA's search for responsive records, EPA's filing system, and files subject to search. Wachter Decl. at ¶¶11 – 13; Supp. Wachter Decl., Exh. G at ¶¶14 – 25. Mr. Wachter has also testified that as of May 15, 2013, his office has determined that all locations reasonably likely to contain responsive records have been searched. Supp. Wachter Decl., Exh. G at ¶26.

Date: July 24, 2013

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar #447889
United States Attorney
for the District of Columbia

DANIEL F. VAN HORN, D.C. BAR # 924092
Chief, Civil Division

By:

By

/s/
Heather Graham-Oliver
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
Tel: (202) 514-5134 Fax: (202) 514-8780

Of counsel:

Jennifer Hammitt, Esq.
Office of General Counsel
U.S. Environmental Protection Agency

EXHIBIT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 29, 2012

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Matthew Forys
Landmark Legal Foundation
19415 Deerfield Avenue
Suite 312
Leesburg, VA 20176

RE: Request Number HQ-FOI-01861-12

Dear Mr. Forys:

This is in response to your request for a fee waiver and expedited processing in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking a copy of records regarding any EPA rule or regulation for which public notice has not been made, but which is contemplated or under consideration for public notice between January 1, 2012 and August 17, 2012.

We have reviewed your fee waiver justification and based on the information provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for otherwise publically available records.

We have reviewed your expedited processing justification and based on the information provided, we are denying your request for expedited processing. You have not demonstrated that the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The EPA will respond to your information request as expeditiously as possible.

Under the FOIA, you have the right to appeal this determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania

Mr. Matthew C. Forys
August 29, 2012
Page 2

Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l) in your appeal. If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", written over the word "Sincerely,".

Larry F. Gottesman
National FOIA Officer

EXHIBIT B

**Douglas
Parsons/DC/USEPA/US**

06/15/2012 04:37 PM

To "Jim Jones", "Louise Wise", "Sherry Sterling", "Steve Nako",
"Kate Graf", "Matt Bogoshian"

cc

bcc

Subject Fw: Copycat - Meet Joe Chemical

FYI.

From: "Andy Igrejas, Safer Chemicals Healthy Families" [andyigrejas@saferchemicals.org]

Sent: 06/15/2012 04:27 PM AST

To: Douglas Parsons

Subject: Copycat □ Meet Joe Chemical

June 11, 2012

Hi Douglas,

We've spotted a copycat and want to take a moment to introduce you. He probably looks familiar. You've likely seen him before dressed up as Joe Camel □ the advertising mascot for cigarettes in the 90's.

Meet Joe □ Joe Chemical, that is.

Instead of working for Big Tobacco like he did when we knew him back in the 90 s □ he s teamed up with the Chemical Industry. Together, they ve stolen a winning page from Big Tobacco s playbook.

Fool me once, shame on you, but fool me twice □ You know how the saying goes. Whether it s deception sponsored by Tobacco or the Chemical Giant s, we aren t buying it! The Chemical Industry has revived the playbook of putting a cartoon happy face on political bullying and distorting science but we re calling their bluff and need your support.

Stop Joe Chemical and Chemical Industry Giants in their tracks, Stand with us to Pass the Safe Chemicals Act Now!

What s the correlation between the chemical industry in 2012 and the tobacco industry in 1991?

Check out the Chicago Tribune s recent series, [Playing with Fire](#), that outs the industry for a decades-long effort to avoid regulation by manipulating science and creating political front groups.

Nicholas Kristof ([NickKristof](#)) [called it "superb journalism and we agree."](#)

The series has important lessons for federal policymakers considering an overhaul the Toxic Substances Control Act (TSCA), and for state policymakers considering legislation of their own until meaningful reform of TSCA is enacted. The Safe Chemicals Act, introduced by Senator Lautenberg and co-sponsored by 21 Senators, would address all of the major gaps in current law, including the flawed system for reviewing new chemicals that the *Tribune* documents in some detail.

Stop Joe Chemical dead in his tracks before he harms the lives of innocent families across America. Stand with us to fight deception and pass the Safe Chemicals Act Now!

Please help us spread the word, see suggested Tweets and Facebook posts below.

Onward!

Safer Chemicals Healthy Families Team

Tweet this:

Stop JoeChemical & Chemical Industry giants in their tracks. Stand w□us to pass

the SafeChemicalsAct now! <http://bit.ly/Mo3pSg>

Big Tobacco in 1991 v Chemical Industry in 2012 JoeChemical
SaferChemicalsAct<http://bit.ly/Mo3pSg>

Post on Facebook:

Stop Joe Chemical and Chemical Industry giants in their tracks, stand with us to
pass the Safe Chemicals Act now! <http://bit.ly/Mo3pSg>

What s the correlation between the Chemical Industry in 2012 and the Tobacco
Industry in 1991? Stand with us to Pass the Safe Chemicals Act Now!
<http://bit.ly/Mo3pSg>

You have received this email through your subscription to the Safer Chemicals, Healthy Families email list.
If you did not subscribe, or would no longer like to receive email updates, [unsubscribe here](#).

EPA-370

**Bob
Perciasepe/DC/USEPA/US**
03/27/2012 09:48 AM

To Peter Robertson
cc
bcc
Subject RE: Re:

Yes,

Lisa is having a presser on phone at noon.

Bob Perciasepe
Deputy Administrator

(o) +1 202 564 4711
(c) (b) (6) Privacy

Peter Robertson [Ignore my previous inquiry to you. I...](#) 03/27/2012 08:26:27 AM

From: Peter Robertson <probertson@anga.us>
To: Bob Perciasepe/DC/USEPA/US@EPA
Date: 03/27/2012 08:26 AM
Subject: RE: Re:

[Ignore my previous inquiry to you.](#) I assume this means you guys are going out with it this afternoon.

Peter

Peter D. Robertson
ANGA
202-789-1301

probertson@anga.us

www.anga.us

From: Bob Perciasepe [<mailto:Perciasepe.Bob@epamail.epa.gov>]
Sent: Monday, March 26, 2012 10:26 PM
To: Peter Robertson
Subject: RE: Re:

Rolling tomorrow pm.

Bob Perciasepe

Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

----- Original Message -----

From : Peter Robertson <probertson@anga.us>
To : Bob Perciasepe/DC/USEPA/US@EPA
Cc :
Sent on : 03/26/2012 10:08:57 PM
Subject : Re:

Got it.

Peter D. Robertson
ANGA
202-789-1301

Sent from my iPhone

On Mar 26, 2012, at 8:22 PM, "Bob Perciasepe" Perciasepe.Bob_epamail.epa.gov wrote:

Peter

Cats out of bag

EPA to impose first greenhouse gas limits on power plants
By [Juliet Eilperin](#), Monday, March 26, 7:24 PM

The [Environmental Protection Agency](#) will issue the first limits on [greenhouse gas emissions](#) from new power plants as early as Tuesday, according to several people briefed on the proposal. The move could end the construction of new conventional coal-fired facilities in the United States.

The proposed rule years in the making and approved by the White House after months of review will require any new power plant to emit no more than 1,000 pounds of carbon dioxide per megawatt of electricity produced. The average U.S. natural gas plant, which emits between 800 and 850 pounds of CO2 per megawatt, meets that standard; coal plants emit an average of 1,768 pounds of carbon dioxide per megawatt.

Industry officials and environmentalists said in interviews that the rule, which comes on the heels of tough new requirements that the Obama administration imposed on [mercury emissions](#) and [cross-state pollution](#) from utilities within the past year, dooms any proposal to build a new coal-fired plant that does not have costly carbon controls.

□ This standard effectively bans new coal plants, said Joseph Stanko, who heads government

relations at the law firm Hunton and Williams and represents several utility companies. "So I don't see how that is an 'all-of-the-above' energy policy."

The rule provides an exception for coal plants that are already permitted and beginning construction within a year. There are about 20 coal plants now pursuing permits; two of them are federally subsidized and would meet the new standard with advanced pollution controls.

The White House declined to comment. President Obama does not mention coal as a key component of the nation's energy supply in speeches about his commitment to exploiting oil and gas reserves and renewable sources.

The proposal does not cover existing plants, although utility companies have announced that they plan to shut down more than 100 boilers, representing more than 40 gigawatts of capacity—nearly 13 percent of the nation's coal-fired electricity—rather than upgrade them with pollution-control technology.

Michael Brune, executive director of the Sierra Club, said the new rule "captures the end of an era" during which coal provided most of the nation's electricity. It currently generates about 40 percent of U.S. electricity.

The power sector accounts for 40 percent of the nation's greenhouse gas emissions, and Brune said it is "the only place where we're making significant progress" at curbing greenhouse gas emissions linked to climate change, adding "at the same time, it's not sufficient."

Cheap [natural gas](#) is also contributing to the closure of aging coal-fired plants, as many utilities switch over to gas plants, which have about half the carbon emissions.

"Gas is contributing to the closure of these plants," Dominion Resources chief executive Thomas F. Farrell II said in an interview last week. But Farrell, who also chairs the Edison Electric Institute, the utility trade association, added, "It's not all EPA. It's a combination of low gas prices and EPA working at the same time."

Still, National Mining Association spokesman Luke Popovich said the proposal shows that Obama is following through on his pledge to reduce greenhouse gas emissions through means other than legislation.

"After Congress refused to pass carbon caps, the administration insisted there were other ways to skin the cat and this is another way—by setting a standard deliberately calculated to drive affordable coal out of the electricity market," Popovich said.

Conrad Schneider, advocacy director for the Clean Air Task Force, said the proposed rule will ensure a cut in the nation's carbon output even if gas prices spike. He cited four planned coal plants that would capture part of their carbon emissions and store them, largely by injecting them into depleted wells to enhance oil recovery. "We need regulatory signals and economic incentives" to make these projects economical, Schneider said.

The EPA rule, called the New Source Performance Standard, will be subject to public comment for at least a month before being finalized, but its backers said they were confident that the White House will usher it into law before Obama's first term ends.

□The Obama administration is committed to moving forward with this, said Nathan Willcox, federal global warming program director for the advocacy group Environment America.

□They're committed to doing it this, and we're committed to helping them do it.

Bob Perciasepe
Deputy Administrator

(o) 1 202 564 4711
(c) (b) (6) Privacy

EPA-322

Bob Sussman/DC/USEPA/US

03/09/2012 06:53 PM

To Bob Perciasepe

cc Nena Shaw, Teri Porterfield

bcc

Subject Fw: Acrylonitrile: Critical Scientific Integrity/Transparency
Deficiencies in the IRIS and TSCA Programs Must Be Cured

Bob -- (b)(5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency
(202) 564-7397

----- Forwarded by Bob Sussman/DC/USEPA/US on 03/09/2012 06:52 PM -----

From: "Bob Fensterheim" <r Fensterheim@regnet.com>
To: Bob Sussman/DC/USEPA/US@EPA
Date: 03/08/2012 09:36 PM
Subject: FW: Acrylonitrile: Critical Scientific Integrity/Transparency Deficiencies in the IRIS and TSCA
Programs Must Be Cured

GREETINGS!

I am forwarding a letter that was just sent to Perciasepe regarding several issues of concern on acrylonitrile. I was wondering whether you might have a few minutes to discuss the issue either Friday or Monday of next week.

Note that I am out of the office; in fact right I am presently en route to San Francisco for the Society of Toxicology meeting,

If there is a convenient time for me to call you, please let me know.

Bob
202.419.1500
202.607.9447 (cell)

From: Bob Fensterheim [mailto:r Fensterheim@regnet.com]
Sent: Thursday, March 08, 2012 9:16 PM
To: Bob Perciasepe (perciasepe.bob@epa.gov)
Cc: Vincent Cogliano (cogliano.vincent@epa.gov); Rebecca Clark (clark.becki@epa.gov); Patricia Sheehan (patricia@regnet.com); Bonnie Trush (btrush@regnet.com)
Subject: Acrylonitrile: Critical Scientific Integrity/Transparency Deficiencies in the IRIS and TSCA Programs Must Be Cured
Importance: High

See the attached letter from the Acrylonitrile Group raising concerns regarding IRIS and TSCA issues. We

would very much like to meet to explain the issues discussed and as such will be contacting your office next week to discuss organizing a meeting.

Please contact my office if you have difficulty accessing the files.

Regards,

Bob Fensterheim
RegNet Environmental Services
1250 Connecticut Ave. NW
Suite 700
Washington, DC 20036
202.419.1500
202.607.9447 (cell)



20120307 Attachments for AN Letter.pdf 20120308 Final AN letter to B Perciasepe.pdf

EPA-315

Anna Aurilio
<asquared@environmentamerica.org>

To Bob Perciasepe

cc

bcc

03/01/2012 08:22 PM

Subject Re: Working Together for Clean Water

You are welcome! We just wrapped up hundreds of hill meetings. Will be happy to send u a summary of hill supporters for a final guidance and rule.

Anna

Sent from my iPhone

Anna Aurilio

Director, Washington DC Office

Environment America

(202)683-1250

asquared@environmentamerica.org

On Mar 1, 2012, at 7:48 PM, Bob Perciasepe Perciasepe.Bob@epamail.epa.gov wrote:

Please thank all.

Bob Perciasepe
Deputy Administrator

(o) +1 202 564 4711

(c)(b) (6) Privacy

----- Forwarded by Bob Perciasepe/DC/USEPA/US on 03/01/2012 07:47 PM -----

From: "Margie Alt, Executive Director, Environment America" <margie.alt@environmentamerica.org>

To: <margie.alt@environmentamerica.org>

Date: 03/01/2012 12:26 PM

Subject: Working Together for Clean Water

Dear Friends,

Sometimes adversity has a silver lining -- unexpected levels of unity and cooperation. So it has been this winter with our work on clean water. For the past two years we have been supporting

and encouraging President Obama's efforts to restore Clean Water Act protections to thousands of waterways, millions of miles of streams and wetlands and the drinking water for 117 million Americans. And I have good news to report: the Obama Administration has announced that it is in **the final stages of issuing a clean water guidance** designed to clarify where and how waterways need to be protected. Although ultimately a rulemaking (and perhaps new legislation) are required to fully solve the problem, the guidance represents a major next step toward that end. The path that got us here has not always been smooth.

In November, Senators Barrasso (WY) and Heller (NV) proposed an amendment to the Energy and Water Appropriation Bill to block the Obama administration from restoring critical aspects of these protections. Thanks to the seriousness of that threat, we experienced **a new level of effort and coordination around clean water issues** among more than a dozen national and regional groups working on the issue. Environment America clean water advocate Shelley Vinyard was at the forefront helping to coordinate weekly □ sometimes daily □ calls and meetings to establish a unified battle plan amongst all involved.

mime-attachment.jpg

Our joint strategy to fend off this dirty water rider centered on ensuring we had the 41 senators needed to block this attack on clean water. To accomplish this task, we mobilized our clean water champions and consolidated support among senators in 12 key states: Virginia, Colorado, Maine, Minnesota, Pennsylvania, Massachusetts, Wisconsin, Michigan, Iowa, Ohio, Missouri and Florida. Beyond just heading off the attack in Congress, we used the opportunity to help embolden the Obama administration to see this initiative through to the end.

The results of this community-wide effort were impressive. In just a few months the coalition signed on more than **400 farmers, recreational businesses, and local elected officials**, generated more than **70,000 constituent actions**, and had **20,000 face to face and 15,000 phone conversations** with concerned Americans, all in support of clean water protections. Moreover, the coalition succeeded in raising the visibility of the issue in the media, with editorials, letters to the editors, and articles printed in states from [Virginia](#) and [Colorado](#) to [Maine](#) and [Ohio](#), including a strong [editorial](#) from the *New York Times* .

In the end, thanks to the combined efforts of the clean water community, and the overwhelming support of a broad mix of Americans, the Barrasso-Heller amendment was not taken up and the White House has promised action on the clean water guidance.

Thank you for all you have done to get us this far. I look forward to sharing even more good news for America's waterways as we approach the 40th anniversary of the Clean Water Act later this spring.

Yours,

Margie Alt
Executive Director

P.S. To keep up to date on this and other issues, you can follow me on [Twitter](#). Or follow Environment America on [Twitter](#) or [Facebook](#).

Environment America is a federation of 29 state based organizations with more than 100 staff and 1 million members, activists, and allies working together for a cleaner, greener, healthier future. Our 501(c)(3) sister organization

Environment America Research & Policy Center conducts research, policy development, public education and grassroots outreach and organizing to win results for our environment and our quality of life.

To unsubscribe: Respond to this message with the word "Unsubscribe" in the subject.

***** ATTACHMENT NOT DELIVERED

This Email message contained an attachment named
image001.jpg
which may be a computer program. This attached computer
program could
contain a computer virus which could cause harm to EPA's
computers,
network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses
introduced
into the EPA network. EPA is deleting all computer program
attachments
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was
legitimate, you
should contact the sender and request that they rename the
file name
extension and resend the Email with the renamed attachment.
After
receiving the revised Email, containing the renamed
attachment, you can
rename the file extension to its correct name.

For further information, please contact the EPA Call Center
at
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED

Janet Woodka/DC/USEPA/US
04/12/2012 11:30 AM

To Bob Perciasepe, Richard Windsor, Brendan Gilfillan
cc
bcc
Subject Fw: Jack Gerard letter on New Source Performance
Standards for the Oil and Gas Sector

Gina was on this but wanted to make sure that you had it.

Janet

From: Khary Cauthen
Sent: Thursday, April 12, 2012 9:31 AM
To: jackson.lisa@epa.gov
Cc: thompson.diane@epa.gov; sussman.bob@epa.gov; mccarthy.gina@epa.gov; Cindy Huang; Heidi Ellis; Amy Dewey
Subject: Jack Gerard letter on New Source Performance Standards for the Oil and Gas Sector

Administrator: Jack wanted to share with you the following thoughts on the Oil and Gas Sector NSPS Rule.



Jack N. Gerard
President and Chief Executive Officer

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone (202) 682-8500
Fax (202) 682-8110
Email gerardj@api.org
www.api.org

April 12 , 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: New Source Performance Standards for the Oil and Gas Sector

Dear Administrator Jackson:

API and its member companies have urged EPA to improve the final rule to ensure it is both achievable and environmentally beneficial. API does not oppose the rule if changes can be made to ensure it can be reasonably implemented to avoid negative impacts to domestic oil and gas production and job creation. Now that EPA has obtained a short extension of the deadline for completing this rule, we would like to reiterate two important points.

I. NSPS requires consideration of cost in the selection of control measures.

In our comments on the proposed rule, we explained that, when the VOC content of gas is low, control measures (such as reduced emissions completions, or RECs) achieve very little VOC emissions reduction and are extraordinarily expensive (i.e., not cost-effective). Therefore, imposing control measures on low-VOC gas is not practicable and cannot be justified under the Clean Air Act.

EPA's cost analysis for the proposed rule assumed a fixed gas VOC content of about 18% by weight, which clearly is substantially higher than the VOC content of gas from many of the shale gas formations currently under development around the country. Our analysis shows that the estimated cost of control measures that EPA developed in support of the proposed rule was unrealistically low. For example, EPA's cost estimate for RECs did not take into account the time needed to transport needed equipment to a site and to set up the equipment once it arrives on site.

As a result of high VOC content and low equipment cost assumptions, EPA concluded that control measures, such as RECs, could be cost-effectively implemented at all affected facilities when, in fact, they can not. When applying the cost-effectiveness criteria EPA has routinely used in prior NSPS rules, control measures are not cost-effective unless the VOC content of the gas is 10% or higher.

In addition, even assuming EPA's cost estimates are correct, RECs still would not be cost-effective for a vast number of oil and gas productions sites. For example, we explained in our comments that the average VOC content of gas from coal bed methane wells is close to zero. Using EPA's own REC cost estimates, assumptions about the VOC reductions achieved, and the value of methane that would be captured, the net cost effectiveness of VOC control would still be hundreds of thousands of dollars per ton of VOC reduced. This is plainly not cost-effective.

EPA does not have unlimited authority under § 111. EPA may regulate only to the extent that its rule can be justified under the prescribed statutory factors. A rule that applies without regard to VOC content is beyond EPA's authority.

II. A phase-in period for reduced emissions completions is needed.

In our comments on the proposed rule, we explained that a phase-in period will be needed to assure successful implementation of the new REC requirement where it will apply. We pointed out that about 25,000 new wells are completed each year and that there are approximately 300 REC sets currently in use in the industry. Assuming each REC set can be used to complete 25 wells per year, this means that about 1000 new REC sets will be needed to ensure that the rule can be implemented without unreasonably delaying new well development. In addition, many existing REC sets likely will need to be retrofitted to meet the new standards. This means that all 300 existing sets will not be immediately available upon the effective date of the rule. For these reasons, the REC requirement should become effective two years after the rule is issued.

If EPA requires immediate compliance with the REC requirement, the rule will cause substantial delays in most oil and gas development projects. Not only is this bad energy and economic policy, such an outcome is not supported by the law (e.g., a standard that cannot be met by most affected sources plainly cannot be shown to be achievable). This situation can and should be avoided by providing a two-year phase-in period for the REC requirement.

While this letter focuses on the REC requirements, similar situations apply to storage vessels and pneumatic controllers. A VOC applicability limit and phase-in period should be included for these two affected sources as well.

□□□□□□□□□□

Thank you for the opportunity to submit these supplemental comments. Please feel free to contact

me if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Gerard", with a long horizontal flourish extending to the right.

Jack Gerard
President and CEO
American Petroleum Institute



O&GAdministratorLtr.pdf

Bob
Perciasepe/DC/USEPA/US
07/18/2012 10:32 AM

To "Bob Sussman", "Nancy Stoner", "Avi Garbow", "Scott Fulton"
cc
bcc
Subject Fw: Electric Industry Comments on EPA Supplemental
Proposals regarding 316(b) of the Clean Water Act and
Electric Generation Facilities

Make sure this is in or gets in docket.

Thanks.

From: "Kuhn, Thomas" [TKuhn eei.org]
Sent: 07/18/2012 08:27 AM AST
To: Bob Perciasepe
Subject: Electric Industry Comments on EPA Supplemental Proposals regarding 316(b) of the Clean Water Act and Electric Generation Facilities

Bob: Attached for your consideration are comments EEI filed last week in response to supplemental information the EPA issued regarding the Agency's pending rulemaking for cooling water intake structures at existing facilities under section 316(b) of the Clean Water Act. 76 Fed. Reg. 22,173 (April 20, 2011). 77 Fed. Reg. 34,315 (June 11, 2012). 77 Fed. Reg. 34,927 (June 12, 2012).

This rule will affect more than 1,000 coal, nuclear and natural gas power plants and manufacturing facilities. It has the potential to impose enormous costs on consumers without providing human health benefits or significant improvements to fish populations. This is a key factor underlying the consensus-based, active engagement by the electric power sector's CEO community to ensure EPA promulgates an appropriate and defensible final rule.

In its June 11 notice, EPA is considering numerous potential improvements to its proposed rule, most of which EEI strongly supports. Such improvements are necessary to make the rule workable and reasonable. In its current form, the proposed rule would impose requirements that many facilities could only meet by incurring costs that are wildly out of proportion to the benefits.

Separately, EEI is very concerned with the EPA's June 12 proposal to use a public opinion survey which reflects unrealistic and inaccurate information as a surrogate for well-established biological and economic analyses that have long been used by EPA and others to determine the benefits and costs of regulation. For reasons discussed in our comments, EEI respectfully urges EPA to discard as unreliable the stated preference survey results.

Please don't hesitate to contact me if you would like to discuss this matter further. Should your staff want additional information, please have them contact Rich Bozek (rbozek@eei.org, 202-508-5641) or EEI Counsel Henri Bartholomot (hbartholomot@eei.org, 202-508-5622).



316(b)-EEI cmt package IM NODA 7-11-12 FINAL.PDF316(b)-EEI cmt package WTP NODA 7-12-12 FINAL.PDF

Arvin Ganesan/DC/USEPA/US

05/30/2012 02:27 PM

To Janet McCabe, Bob Perciasepe, Dennis McLerran, Ken
Kopocis, Avi Garbow

cc Ed Walsh

bcc

Subject Fw: Agenda

Here are the issues that will likely be discussed tomorrow with Murkowski's staff.

----- Forwarded by Arvin Ganesan/DC/USEPA/US on 05/30/2012 02:25 PM -----

From: "Campbell, McKie (Energy)" <McKie_Campbell@energy.senate.gov>
To: Arvin Ganesan/DC/USEPA/US@EPA
Cc: "McCormick, Patrick (Energy)" <Patrick_McCormick@energy.senate.gov>
Date: 05/30/2012 02:19 PM
Subject: FW: Agenda

Arvin ☐

Attached is a proposed agenda. We do not expect to resolve all these issues, but hope to identify appropriate legislative and EPA staff to work on each and report back.

McKie

McKie Campbell
Senate Energy and Natural Resources Committee
202-224-5305
McKie_Campbell@energy.senate.gov



Proposed Agenda May 31, 2012.docx

Proposed Agenda

May 31, 2012

- I. Introductions/Objectives
- II. Issues for Discussion
 - a. Recognition of Progress
 - i. NESHAP Rice Regulations for Power Production
 - ii. Aviation Fuel Regulations
 - b. Issues of Significant On-going Concern
 - i. Cruiseship and Freight Carrier Emission Concerns
 - ii. "Boiler MACT" Concerns, e.g., Alyeska TAPS impacts
 - iii. Bristol Bay Watershed Assessment
 - iv. Drinking Water Regulation □ Alaska-wide
 - v. Vessel Discharge Regulations
 - vi. Power Plan Air Quality Regulation, e.g., Healy Plant
 - vii. Particulate Matter Regulation, e.g., Fairbanks 2.5
 - viii. Air Regulations - Incinerator Rules
 - ix. Juneau Runway Ice Melt
 - x. Mat-Su Amonia Waste Water Treatment
 - xi. EPA Wetland Enforcement
 - xii. CERCLA Section 108 (b)
- III. Next Steps

Alisa Coe
<acoe@earthjustice.org>

02/13/2012 12:20 PM

To Bob Sussman, Nancy Stoner, Bob Perciasepe, LisaP Jackson

cc

bcc

Subject FW: Earthjustice Comments on EPA Review for Approval of FDEPs Proposed Numeric Nutrient Rules

Please find attached the comments of Earthjustice, et al. on EPA's approval of FDEP's proposed rules filed yesterday with Region 4.

Best,
Alisa Coe

From: Alisa Coe

Sent: Monday, February 13, 2012 1:31 AM

To: baschon.carol@epa.gov; Gwendolyn Keyes Fleming (KeyesFleming.Gwendolyn@EPA.gov); 'giattina.jim@epa.gov'

Subject: Earthjustice Comments on EPA Review for Approval of FDEPs Proposed Numeric Nutrient Rules

Please find attached Comments and Exhibits filed on behalf of Earthjustice, Florida Wildlife Federation, Sierra Club, St. Johns Riverkeeper, Conservancy of Southwest Florida, and Environmental Confederation of Southwest Florida on EPA's Review for Approval of Florida DEP's Proposed Numeric Nutrient Rules. If there is an additional address and/or EPA official to which these comments should be directed, or another method of delivery which should be employed, please advise me immediately.

With Kind Regards,
Alisa Coe

Alisa Coe
Staff Attorney
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, FL 32301
(850) 681-0031
(850) 681-0020 Fax
www.earthjustice.org

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Comments by Earthjustice, FWF, Sierra et al on Approval of FDEP Numeric Nutrient Rules.pdf



Exhibit A--SB 2060.pdf Exhibit B--Petitions.pdf Exhibit C - Notices of Proposed Rule and Amendments - with text.pdf



Exhibit D--Notice of Hearing.pdf



Exhibit E--Staff Analysis.pdf



Exhibit F--Amended Notice of Hearing.pdf



Exhibit G--Letter to FDEP 11-02-11.pdf



Exhibit H--Power Group Amendment.pdf



Exhibit I--ERC Notice.pdf

Sonia Altieri/DC/USEPA/US

05/30/2012 06:03 PM

To Nancy Stoner, Mike Shapiro

cc Ellen Gilinsky, Travis Loop, Martha Workman, Debbie Cash,
Crystal Penman

bcc

Subject Next Agriculture Stakeholder Coffee - June 6, 2012, 9:00
a.m.

Nancy and Mike,

I want to make sure you are fine with us proceeding with our agriculture stakeholder meeting on June 6 at 9:00 a.m. It looks like you have a mandatory ECOS meeting from 8:30 a.m. until 12:30 p.m. on that day. Ellen is available to chair the meeting. We've received several agenda items. Please let us know.
Thanks! Sonia

----- Forwarded by Sonia Altieri/DC/USEPA/US on 05/30/2012 05:55 PM -----

From: Ellen Gilinsky/DC/USEPA/US
To: Sonia Altieri/DC/USEPA/US@EPA
Cc: Travis Loop/DC/USEPA/US@EPA
Date: 05/30/2012 12:57 PM
Subject: Re: Fw: Next Agriculture Stakeholder Coffee - June 6, 2012, 9:00 a.m. Reminder - Please send your agenda topics.

fine with me if okay with Nancy but I dont see conflict on Mike's calendar?

Ellen Gilinsky

Senior Policy Advisor

Office of Water

US Environmental Protection Agency

Room 3111 East

Telephone: (202) 564-2549

Cell : (202) 236-6882

Email: Gilinsky.Ellen@epa.gov

Mailing Address: 1200 Pennsylvania Avenue, NW, Mail Code 4101M, Washington, DC 20460-0001

Physical/FedEx/Courier Address: 1201 Constitution Ave., NW, Rm. 3111 East Bldg., Washington, DC 20004-3302

Sonia Altieri

[Ellen, Per Martha, the AG meeting is o...](#)

05/30/2012 12:47:12 PM

From: Sonia Altieri/DC/USEPA/US
To: Ellen Gilinsky/DC/USEPA/US@EPA
Cc: Travis Loop/DC/USEPA/US@EPA
Date: 05/30/2012 12:47 PM
Subject: Fw: Next Agriculture Stakeholder Coffee - June 6, 2012, 9:00 a.m. Reminder - Please send your agenda topics.

Ellen,

Per Martha, the AG meeting is on your calendar. Nancy and Mike will be attending another meeting. Unless you feel differently, I'm keeping the date and time as is. Let me know! Thanks, Sonia

----- Forwarded by Sonia Altieri/DC/USEPA/US on 05/30/2012 12:45 PM -----

From: "Michael Formica" <formicam@nppc.org>
To: "Tom Hebert" <tom.hebert@bayardridge.com>, Sonia Altieri/DC/USEPA/US@EPA
Date: 05/30/2012 11:58 AM
Subject: RE: Next Agriculture Stakeholder Coffee - June 6, 2012, 9:00 a.m. Reminder - Please send your agenda topics.

What Tom stated. Also, is it possible to push this meeting back a week. I will be in Iowa all next week. I seem to have missed the last couple of meetings because of travel.

Michael Formica

Chief Environmental Counsel
National Pork Producers Council
(202) 680-3820

From: Thomas Hebert [mailto:tom.hebert@bayardridge.com]

Sent: Wednesday, May 30, 2012 11:50 AM

To: Sonia Altieri

Cc: Michael Formica

Subject: RE: Next Agriculture Stakeholder Coffee - June 6, 2012, 9:00 a.m. Reminder - Please send your agenda topics.

Sorry Sonia,

My suggestions are to hear about the status of the following:

1. Proposed CAFO rulemaking on "Duty to Apply"
2. Proposed CAFO rule guidance on "Duty to Apply"
3. Proposed CAFO rulemaking in conformance with the Chesapeake Bay litigation settlement
4. Final decision regarding the proposed Section 308 rulemaking.

In addition, it would be good to meet Betsy Southerland and to hear from her about her office's efforts on numeric nutrient criteria and how they are working with states in this regard.

Thanks!

Tom Hebert

Tom Hebert

Bayard Ridge Group

(Office) 202-407-9069

(Mobile) 202-441-0570

(Fax) 202-204-5676

tom.hebert@bayardridge.com

From: Sonia Altieri [<mailto:Altieri.Sonia@epamail.epa.gov>]

Sent: Wednesday, May 30, 2012 11:11 AM

Subject: Next Agriculture Stakeholder Coffee - June 6, 2012, 9:00 a.m. Reminder - Please send your agenda topics.

I've only received one agenda item. Please send me your agenda topics as soon as possible. Thanks!
Sonia

----- Forwarded by Sonia Altieri\DC\USEPA\US on 05/30/2012 11:10 AM -----

From: Sonia Altieri\DC\USEPA\US

To:

Date: 05/24/2012 05:47 PM

Subject: Next Agriculture Stakeholder Coffee - June 6, 2012, 9:00 a.m.

Your next coffee with the Office of Water is scheduled for Wednesday, June 6, from 9:00 to 10:00 a.m., in EPA's Office of Water Conference Room 3233, EPA East Building, 1201 Constitution Avenue, N.W. The entrance to the Building is on Constitution Avenue closest to 12th Street, directly across from the National Museum of American History.

Please submit your agenda items to me by Tuesday, May 29, 2012. Please make sure that your agenda items are as specific and detailed as possible.

Please plan to arrive no later than 8:45 a.m. to allow enough time to get through security. After you have signed in and gone through security, please have the guard call 564-5700 for an escort.

Thank you, and we look forward to seeing you in June!

Best wishes,

Sonia Altieri
Director of Outreach
Office of Water
U.S. Environmental Protection Agency (4101M)
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Tel. (202) 564-0243
Blackberry: (202) 380-6802

<ROBERT.WYMAN@lw.com>

01/25/2012 02:23 AM

To Janet McCabe, Lisa Feldt

cc Joseph Goffman

bcc

Subject RE: ReCommunity

Thanks very much, Janet. Much appreciated.

From: Janet McCabe [mailto:McCabe.Janet@epamail.epa.gov]

Sent: Tuesday, January 24, 2012 6:25 PM

To: Wyman, Robert (LA); Lisa Feldt

Cc: Joseph Goffman

Subject: Re: ReCommunity

Bob--thanks for the additional information. As I indicated when we spoke, I have spoken with my counterpart from the Solid Waste Office (copied here), and she and I will be talking further about the process you have raised. We will get back to you soon.

Janet McCabe
Principal Deputy Assistant Administrator
Office of Air and Radiation, USEPA
Room 5426K, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

-----"Wyman, Robert (LA)" ROBERT.WYMAN@lw.com wrote: -----

To: Janet McCabe@DC@USEPA@US@EPA

From: "Wyman, Robert (LA)" ROBERT.WYMAN@lw.com

Date: 01/24/2012 08:54PM

Cc: Joseph Goffman@DC@USEPA@US@EPA

Subject: ReCommunity

Janet – thanks for your time the other day. Given the importance of the issue, I am sending some background information. We would greatly appreciate a prompt meeting with the relevant Air Office and OGC folks to make sure the agency has the information it needs to make an informed decision.

Bottom Line: ReCommunity has a high-performance MSW separation and engineering process that enables it to take valuable components of a municipal waste stream and to produce a highly-engineered fuel that is carefully tailored for end use in a manner that can materially reduce emissions. One immediate end use is in the partial replacement of coal at power plants. But the process offers a variety of quite significant sustainability benefits. In addition to cleaner electricity generation, beneficial end use will include transportation fuel production and the generation of a variety of chemical feedstocks, all of which add material value beyond the process's obvious recycling and waste minimization benefits. *Absolutely essential to this sustainability vision* is the proper characterization of the engineered material as a FUEL and not a WASTE. I note below the procedural posture that gives rise to this issue, the benefits of a fuel characterization and other relevant information.

MORE DETAILED NOTE:

I wanted to follow up with you on our questions regarding the regulatory treatment of our client ReCommunity's ReEngineered Feedstock product. As we discussed, ReCommunity is a recycling company that has developed a new and novel approach to process and create valuable manufactured products from single-stream municipal waste. ReCommunity's manufacturing process far exceeds that of several materials identified as fuel (rather than waste) in the Non-Hazardous Secondary Materials (NHSM) rule, and the first commercial product from ReEngineered Feedstock will be a fuel and emissions control product for coal-fired power plants that can dramatically reduce the cost of compliance with recent EPA air rules under Utility MACT and CSAPR.

ReCommunity begins its process by using advanced optical and mechanical sorting techniques to separate the materials into their component aspects. Marketable recyclables, including glass, plastics, metals, and paper are recycled, with profits shared to the municipality providing the materials. Non-marketable materials are then recombined in a precise formula to form commercial products with a variety of uses, after non-usable materials are sold or discarded (i.e. aggregate, composting, etc.). For its initial commercial product, ReCommunity has developed a product that is engineered to have identical consistency to pulverized coal (so it can be used in existing boilers without fouling) and comparable heating value performance to the coal used currently in the company's coal power plant. (Through a precise blending of materials, ReCommunity can engineer the fuel to match a wide range of heat inputs, depending on the needs of the plant at issue.) Moreover, ReCommunity engineers the fuel with a blend of sorbents tailored to reduce emissions of NO_x, SO₂, acid gases, metals and other pollutants to enable the plant emissions profile to meet EPA's new requirements. (Emissions reduction are achieved through a combination of inherent reductions based on the ReEngineered Feedstock and the addition of sorbents.) Not only will this specially targeted product dramatically reduce the cost of compliance with the EPA rulemakings such as the Transport Rule, Utility MACT and Industrial Boiler MACT, but it will also increase power plant efficiency by reducing the need for add-on control systems. These results will guarantee a price for ReCommunity's products that is higher than the traditional fuels they are replacing, demonstrating that ReEngineered Feedstock truly is a valuable commodity.

The benefits to the environment of the ReCommunity process are therefore numerous:

- Cost-effective reductions in SO_x, NO_x, acid gases, metals, and mercury,
- Increased domestic jobs and economic benefits to local communities,
- Greenhouse gas reductions (dramatically reduced landfilling of organic material, increased power plant efficiency, and displacing fossil fuel feedstocks and fuels with a lower carbon footprint fuel), and
- Waste reduction (through increased recycling, use of organic material as feedstock, and reduced waste generation from air pollution controls).

Although the regulations themselves do not address the issue in any way, questions have arisen regarding the potential for a disparate treatment of fuels with any constituent component that was originally part of the municipal waste stream. This interpretation would not be consistent with the application of the NHSM rule, or the language of the Clean Air Act. Under the Clean Air Act Sec. 129, the definition of "solid waste" promulgated by the Administrator under RCRA controls whether a unit is determined to be a "solid waste incineration unit" covered by the incinerator limits. Only after a unit is determined to be a "solid waste incineration unit" (i.e. a unit that burns "solid waste" as the Administrator defines that term under RCRA) can it be categorized as one of the types of incineration units that burn municipal waste, or as a separate category, such as Commercial and Industrial Solid Waste Incineration Units. EPA has expressly categorized as fuel several types of materials that would qualify as "municipal waste" under the Sec. 129 definition, including scrap plastics, resinated wood, used tires, manure, construction and demolition wood, and landfill gas. All of these components are likely to contain some materials

that would classify them as “municipal waste” under the Clean Air Act, but with sufficient processing and manufacturing, EPA has indicated that these materials may (or do) qualify as fuels, ingredients, or products – such that they can be burned for their fuel value without subjecting the facility to application of the incinerator standards.

The NHSM rule contains no language exempting or limiting the application of its processing and legitimacy criteria to materials that could not be considered municipal waste. However, certain comments in the preamble could be interpreted to indicate disparate treatment for materials that were part of the municipal waste stream at any point in the material’s history. **As a result, we are seeking clarification that products that meet the legitimacy criteria and are sufficiently processed according to the NHSM rule will not trigger regulation under Section 129, regardless of whether any of the source materials were part of the municipal waste stream.** (Indeed, we believe that ReCommunity’s product should be considered a fuel and entirely outside the scope of the NHSM by virtue of the fact that it is the “primary product of a manufacturing or commercial process” – i.e., ReCommunity’s proprietary fuel manufacturing process – and therefore does not constitute a “secondary material” at all. See 40 C.F.R. 241.2 (defining “secondary material” as “any material that is *not* the primary product of a manufacturing or commercial process” (emphasis added).)

ReCommunity’s manufacturing process is significantly more technologically advanced and intensive than any of the processing discussed by EPA as sufficient in the NHSM rule. ReCommunity begins by separation and sorting, which in many instances in the NHSM rule was found to be sufficient to classify a material as a fuel, not a waste. However, in the production of the coal substitute product with emissions control properties, ReCommunity specifically creates a homogenous fuel that performs consistently in a particular power plant, and is chemically constant in its combustion profile while physically constant in form. This level of manufacturing should clearly indicate that the materials that enter ReCommunity’s facility have been fundamentally transformed, from a solid waste to a valuable product. As such, the use of said product should not trigger Section 129 of the Clean Air Act, as the product is being combusted for its fuel and emissions control properties. Given the potentially significant benefits to the environment, particularly in reducing the costs of emissions controls for coal-fired power plants seeking to meet EPA’s forthcoming air emissions rules, we hope that the Agency will confirm our understanding that ReCommunity’s product is not a waste – but rather a valuable commercial product.

Based on some initial discussions with the NHSM staff in the Office of Solid Waste, however, we understand that EPA may already be considering a similar or related issue regarding whether municipal solid waste can ever be sufficiently processed to be considered a fuel or a product. We further understand that jurisdiction over this question resides not with OSWER, but rather with OAR and OGC – but that OSWER has been pushing to get an answer to the question as quickly as possible. Needless to say, the resolution of this question is critically important to ReCommunity and will determine whether or not power plants and industrial boilers will be able to take advantage of this important product, with its dramatic emissions reduction and sustainability benefits.

Accordingly, I would very much appreciate an opportunity to present ReCommunity’s technology to you, Gina McCarthy and other appropriate persons for consideration.

Sincere thanks.

Bob

Robert A. Wyman, Jr.

LATHAM WATKINS^{LLP}

355 South Grand Avenue

Los Angeles, CA 90071-1560

Latham & Watkins LLP

Lisa Feldt/DC/USEPA/US

06/13/2012 08:17 AM

To Shawna Bergman

cc "Barry Breen", "Becky Brooks", "Ellyn Fine", "Mathy Stanislaus", Matt Straus

bcc

Subject Re: ACC request to speak about the contained gaseous material issue

No it is NHSM. Suzanne/Jim Berlow/Matt can help.pull some tp together quickly,

Lisa Feldt
Deputy Assistant Administrator
Office of Solid Waste & Emergency Response
U.S. Environmental Protection Agency
Phone: (202) 566-0200:
Fax: (202) 566-0207
feldt.lisa@epa.gov

Shawna Bergman

ACC asks that you talk about " the c...

06/13/2012 08:10:36 AM

From: Shawna Bergman/DC/USEPA/US
To: "Mathy Stanislaus" <Stanislaus.Mathy@epamail.epa.gov>, "Lisa Feldt" <Feldt.Lisa@epamail.epa.gov>, "Barry Breen" <Breen.Barry@epamail.epa.gov>
Cc: "Ellyn Fine" <Fine.Ellyn@epamail.epa.gov>, "Becky Brooks" <Brooks.Becky@epamail.epa.gov>
Date: 06/13/2012 08:10 AM
Subject: ACC request to speak about the contained gaseous material issue

ACC asks that you talk about " the contained gaseous material issue" as well today. Does that mean the "chemical plant safety issue?"

Shawna Roesch Bergman (sent via BlackBerry)
Chief of Staff
U.S. EPA Office of Solid Waste and Emergency Response
202-564-3641

From: "Miller, Laurie" [Laurie Miller americanchemistry.com]
Sent: 06/13/2012 11:54 AM GMT
To: Shawna Bergman
Subject: RE: FW: Invitation to American Chemistry Council Environmental Management Committee Meeting, June 13, 2012

Good Morning, Shawna,

I am just confirming that Mr. Stanislaus will be joining my committee meeting today at ACC at 12:30 PM.

Also, I was wondering if he would be willing to talk about the contained gaseous material issue in addition to EJ and RCRA issues in general.

Thanks and regards,

Laurie

Laurie A. Miller – Sr. Director, Environment & Process Safety

laurie_miller@americanchemistry.com

American Chemistry Council | 700 – 2nd Street NE | Washington, DC | 20002

O: 202.249.6413 | F: 202.478.2503

www.americanchemistry.com

From: Shawna Bergman [mailto:Bergman.Shawna@epa.gov]

Sent: Tuesday, May 29, 2012 5:19 PM

To: Miller, Laurie

Subject: Re: FW: Invitation to American Chemistry Council Environmental Management Committee Meeting, June 13, 2012

So that I have all the information when I check on it, what time would you need Mathy?

Shawna Roesch Bergman

Chief of Staff

Office of Solid Waste and Emergency Response

U.S. Environmental Protection Agency

Phone: 202.564.3641

▼ "Miller, Laurie" ---05/29/2012 03:39:54 PM---Dear Shawna, Thanks so much for returning my call. The invitation is below.

From: "Miller, Laurie" Laurie_Miller@americanchemistry.com

To: Shawna Bergman\DC\USEPA\US EPA

Date: 05/29/2012 03:39 PM

Subject: FW: Invitation to American Chemistry Council Environmental Management Committee Meeting, June 13, 2012

Dear Shawna,

Thanks so much for returning my call. The invitation is below.

Regards,

Laurie

Laurie A. Miller – Sr. Director, Environment & Process Safety

laurie_miller@americanchemistry.com

American Chemistry Council | 700 – 2nd Street NE | Washington, DC | 20002

O: 202.249.6413 | F: 202.478.2503

www.americanchemistry.com

From: Miller, Laurie

Sent: Tuesday, May 22, 2012 2:35 PM

To: aastanislaus@epamail.epa.gov

Cc: Miller, Laurie (Laurie@Miller@americanchemistry.com)

Subject: Invitation to American Chemistry Council Environmental Management Committee Meeting, June 13, 2012

Importance: High

Dear Assistant Administrator Stanislaus,

I manage the American Chemistry Council's (ACC) Environmental Management Committee (EMC), which oversees advocacy for ACC's member companies on air, water and waste issues. The EMC is holding a meeting at ACC's offices on June 13th, 2012, to discuss these issues and would be honored if you could attend.

The Committee is interested in learning about your perspective on the chemical industry's role in Environmental Justice (EJ) initiatives, as well as the role of EJ in regulations generally, and about your vision for the EPA hazardous waste program, including how the chemical industry fits into this vision. We would also be happy to discuss other topics that you believe would be of mutual interest.

Thank you in advance for considering this request, and please do not hesitate to contact me if you have questions.

Regards,

Laurie Miller

Laurie A. Miller – Sr. Director, Environment & Process Safety

laurie_miller@americanchemistry.com

American Chemistry Council | 700 – 2nd Street NE | Washington, DC | 20002

O: 202.249.6413 | F: 202.478.2503

www.americanchemistry.com

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Lisa Feldt/DC/USEPA/US

02/09/2012 05:43 PM

To Cynthia Browne

cc Patricia Embrey, Peter Tsirigotis, Lala Alston, Tanya Johnson, Teresa Hill, Matt Straus, Becky Brooks, Jim Berlow
bcc

Subject Re: ReCommunity

Adding in Teresa Hill who keeps my schedule to get back to you. Teresa, we also should include Matt Straus and Jim Berlow.

Lisa Feldt
Deputy Assistant Administrator
Office of Solid Waste & Emergency Response
U.S. Environmental Protection Agency
Phone: (202) 566-0200:
Fax: (202) 566-0207
feldt.lisa@epa.gov

Cynthia Browne

Hi All, Wednesday, Feb 15 at 4:45 pm...

02/09/2012 05:20:34 PM

From: Cynthia Browne/DC/USEPA/US
To: Patricia Embrey/DC/USEPA/US@EPA, Lisa Feldt/DC/USEPA/US@EPA, Peter Tsirigotis/RTP/USEPA/US@EPA
Cc: Lala Alston/RTP/USEPA/US@EPA, Tanya Johnson/RTP/USEPA/US@EPA
Date: 02/09/2012 05:20 PM
Subject: Re: ReCommunity

Hi All,

Wednesday, Feb 15 at 4:45 pm - does this time work for everyone?

Bob Wyman is available that time - so please let me know and I will send out a meeting invite soon.

Thank you,

Cynthia Browne
Office of Air and Radiation
ARN Room 5406
U.S. Environmental Protection Agency
Email: browne.cynthia@epa.gov
Office: 202-564-7404

Joseph Goffman

Hi, Bob. Sorry for the long delay, but w...

02/08/2012 10:23:44 PM

From: Joseph Goffman/DC/USEPA/US
To: "ROBERT WYMAN" <ROBERT.WYMAN@lw.com>, Janet McCabe/DC/USEPA/US@EPA, Lisa Feldt/DC/USEPA/US@EPA
Cc: Eli.Hopson@lw.com, "Browne Cynthia" <Browne.Cynthia@epa.gov>, "Peter Tsirigotis" <Tsirigotis.Peter@epamail.epa.gov>, "Patricia Embrey" <Embrey.Patricia@epamail.epa.gov>
Date: 02/08/2012 10:23 PM
Subject: Re: ReCommunity

Hi, Bob. Sorry for the long delay, but we would like to set up a meeting for ReCommunity and you to come in and/or via conference call to brief key people here. Cynthia can work with you

to set up time. Thanks.

From: [ROBERT.WYMAN lw.com]
Sent: 01/24/2012 11:23 PM PST
To: Janet McCabe; Lisa Feldt
Cc: Joseph Goffman
Subject: RE: ReCommunity

Thanks very much, Janet. Much appreciated.

From: Janet McCabe [mailto:McCabe.Janet@epamail.epa.gov]
Sent: Tuesday, January 24, 2012 6:25 PM
To: Wyman, Robert (LA); Lisa Feldt
Cc: Joseph Goffman
Subject: Re: ReCommunity

Bob--thanks for the additional information. As I indicated when we spoke, I have spoken with my counterpart from the Solid Waste Office (copied here), and she and I will be talking further about the process you have raised. We will get back to you soon.

Janet McCabe
Principal Deputy Assistant Administrator
Office of Air and Radiation, USEPA
Room 5426K, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

-----"Wyman, Robert (LA)" ROBERT.WYMAN@lw.com wrote: -----
To: Janet McCabe@DC@USEPA@US@EPA
From: "Wyman, Robert (LA)" ROBERT.WYMAN@lw.com
Date: 01/24/2012 08:54PM
Cc: Joseph Goffman@DC@USEPA@US@EPA
Subject: ReCommunity

Janet – thanks for your time the other day. Given the importance of the issue, I am sending some background information. We would greatly appreciate a prompt meeting with the relevant Air Office and OGC folks to make sure the agency has the information it needs to make an informed decision.

Bottom Line: ReCommunity has a high-performance MSW separation and engineering process that enables it to take valuable components of a municipal waste stream and to produce a highly-engineered fuel that is carefully tailored for end use in a manner that can materially reduce emissions. One immediate end use is in the partial replacement of coal at power plants. But the process offers a variety of quite significant sustainability benefits. In addition to cleaner electricity generation, beneficial end use will include transportation fuel production and the generation of a variety of chemical feedstocks, all of which add material value beyond the process's obvious recycling and waste minimization benefits. *Absolutely essential to this sustainability vision* is the proper characterization of the engineered material as a FUEL and not a

WASTE. I note below the procedural posture that gives rise to this issue, the benefits of a fuel characterization and other relevant information.

MORE DETAILED NOTE:

I wanted to follow up with you on our questions regarding the regulatory treatment of our client ReCommunity's ReEngineered Feedstock product. As we discussed, ReCommunity is a recycling company that has developed a new and novel approach to process and create valuable manufactured products from single-stream municipal waste. ReCommunity's manufacturing process far exceeds that of several materials identified as fuel (rather than waste) in the Non-Hazardous Secondary Materials (NHSM) rule, and the first commercial product from ReEngineered Feedstock will be a fuel and emissions control product for coal-fired power plants that can dramatically reduce the cost of compliance with recent EPA air rules under Utility MACT and CSAPR.

ReCommunity begins its process by using advanced optical and mechanical sorting techniques to separate the materials into their component aspects. Marketable recyclables, including glass, plastics, metals, and paper are recycled, with profits shared to the municipality providing the materials. Non-marketable materials are then recombined in a precise formula to form commercial products with a variety of uses, after non-usable materials are sold or discarded (i.e. aggregate, composting, etc.). For its initial commercial product, ReCommunity has developed a product that is engineered to have identical consistency to pulverized coal (so it can be used in existing boilers without fouling) and comparable heating value performance to the coal used currently in the company's coal power plant. (Through a precise blending of materials, ReCommunity can engineer the fuel to match a wide range of heat inputs, depending on the needs of the plant at issue.) Moreover, ReCommunity engineers the fuel with a blend of sorbents tailored to reduce emissions of NO_x, SO₂, acid gases, metals and other pollutants to enable the plant emissions profile to meet EPA's new requirements. (Emissions reduction are achieved through a combination of inherent reductions based on the ReEngineered Feedstock and the addition of sorbents.) Not only will this specially targeted product dramatically reduce the cost of compliance with the EPA rulemakings such as the Transport Rule, Utility MACT and Industrial Boiler MACT, but it will also increase power plant efficiency by reducing the need for add-on control systems. These results will guarantee a price for ReCommunity's products that is higher than the traditional fuels they are replacing, demonstrating that ReEngineered Feedstock truly is a valuable commodity.

The benefits to the environment of the ReCommunity process are therefore numerous:

- Cost-effective reductions in SO_x, NO_x, acid gases, metals, and mercury,
- Increased domestic jobs and economic benefits to local communities,
- Greenhouse gas reductions (dramatically reduced landfilling of organic material, increased power plant efficiency, and displacing fossil fuel feedstocks and fuels with a lower carbon footprint fuel), and
- Waste reduction (through increased recycling, use of organic material as feedstock, and reduced waste generation from air pollution controls).

Although the regulations themselves do not address the issue in any way, questions have arisen regarding the potential for a disparate treatment of fuels with any constituent component that was originally part of the municipal waste stream. This interpretation would not be consistent with the application of the NHSM rule, or the language of the Clean Air Act. Under the Clean Air Act Sec. 129, the definition of "solid waste" promulgated by the Administrator under RCRA controls whether a unit is determined to be a "solid waste incineration unit" covered by the incinerator limits. Only after a unit is determined to be a "solid waste incineration unit" (i.e. a unit that burns "solid waste" as the Administrator defines that term under RCRA) can it be categorized as one of the types of incineration units that burn municipal waste, or as a separate category, such as Commercial and Industrial Solid Waste Incineration Units. EPA has expressly categorized as fuel several types of materials that would qualify as

“municipal waste” under the Sec. 129 definition, including scrap plastics, resinated wood, used tires, manure, construction and demolition wood, and landfill gas. All of these components are likely to contain some materials that would classify them as “municipal waste” under the Clean Air Act, but with sufficient processing and manufacturing, EPA has indicated that these materials may (or do) qualify as fuels, ingredients, or products – such that they can be burned for their fuel value without subjecting the facility to application of the incinerator standards.

The NHSM rule contains no language exempting or limiting the application of its processing and legitimacy criteria to materials that could not be considered municipal waste. However, certain comments in the preamble could be interpreted to indicate disparate treatment for materials that were part of the municipal waste stream at any point in the material’s history. **As a result, we are seeking clarification that products that meet the legitimacy criteria and are sufficiently processed according to the NHSM rule will not trigger regulation under Section 129, regardless of whether any of the source materials were part of the municipal waste stream.** (Indeed, we believe that ReCommunity’s product should be considered a fuel and entirely outside the scope of the NHSM by virtue of the fact that it is the “primary product of a manufacturing or commercial process” – i.e., ReCommunity’s proprietary fuel manufacturing process – and therefore does not constitute a “secondary material” at all. See 40 C.F.R. 241.2 (defining “secondary material” as “any material that is *not* the primary product of a manufacturing or commercial process” (emphasis added).)

ReCommunity’s manufacturing process is significantly more technologically advanced and intensive than any of the processing discussed by EPA as sufficient in the NHSM rule. ReCommunity begins by separation and sorting, which in many instances in the NHSM rule was found to be sufficient to classify a material as a fuel, not a waste. However, in the production of the coal substitute product with emissions control properties, ReCommunity specifically creates a homogenous fuel that performs consistently in a particular power plant, and is chemically constant in its combustion profile while physically constant in form. This level of manufacturing should clearly indicate that the materials that enter ReCommunity’s facility have been fundamentally transformed, from a solid waste to a valuable product. As such, the use of said product should not trigger Section 129 of the Clean Air Act, as the product is being combusted for its fuel and emissions control properties. Given the potentially significant benefits to the environment, particularly in reducing the costs of emissions controls for coal-fired power plants seeking to meet EPA’s forthcoming air emissions rules, we hope that the Agency will confirm our understanding that ReCommunity’s product is not a waste – but rather a valuable commercial product.

Based on some initial discussions with the NHSM staff in the Office of Solid Waste, however, we understand that EPA may already be considering a similar or related issue regarding whether municipal solid waste can ever be sufficiently processed to be considered a fuel or a product. We further understand that jurisdiction over this question resides not with OSWER, but rather with OAR and OGC – but that OSWER has been pushing to get an answer to the question as quickly as possible. Needless to say, the resolution of this question is critically important to ReCommunity and will determine whether or not power plants and industrial boilers will be able to take advantage of this important product, with its dramatic emissions reduction and sustainability benefits.

Accordingly, I would very much appreciate an opportunity to present ReCommunity’s technology to you, Gina McCarthy and other appropriate persons for consideration.

Sincere thanks.

Bob

Robert A. Wyman, Jr.

LATHAM WATKINS^{LLP}

355 South Grand Avenue

Latham & Watkins LLP

Jim Jones/DC/USEPA/US

01/04/2012 05:31 PM

To Wendy Cleland-Hamnett, Barbara Cunningham-HQ

cc Louise Wise, Angela Hofmann

bcc

Subject *Confidential: Fw: EPA Proposed Rule on PMN Amendments
Regarding Confidential Business Information: Request for
Meeting

Interesting coincidence. Thoughts? I usually think it is good to meet and hear concerns directly.

Jim Jones
Acting Assistant Administrator
EPA Office of Chemical Safety and Pollution Prevention
Room 3130A EPA East
1200 Pennsylvania Ave., NW
Washington DC 20460
202 564-2902

----- Forwarded by Jim Jones/DC/USEPA/US on 01/04/2012 05:30 PM -----

From: "Walls, Michael" <Michael_Walls@americanchemistry.com>
To: Jim Jones/DC/USEPA/US@EPA
Cc: "Blanco, Susan" <Susan_Blanco@americanchemistry.com>
Date: 01/04/2012 02:58 PM
Subject: EPA Proposed Rule on PMN Amendments Regarding Confidential Business Information: Request
for Meeting

Jim, I hope you had a great Holiday. Happy New Year!

I haven't had an earlier chance to welcome you back to OCSPP, and I know you've been very busy, but I did want to raise an issue with you for possible discussion with ACC and a number of other organizations. I've attempted to schedule a meeting with Bob Sussman several times before EPA completed its proposal on PMN amendments on CBI claims for chemical identity and before the proposal was sent to OMB, but we were unable to do that. We have a very different interpretation of TSCA Section 14 and its application to chemical identity claims than EPA, and we've shared our thinking (including our legal analysis) with Wendy and the staff. We would appreciate a similar opportunity to review with you why we think PMN submitters should have an opportunity to make claims to protect chemical identity as CBI.

We have been working with our colleagues at the American Cleaning Institute and the Fragrance Materials Association on this issue. If we were able to schedule a meeting, the participants would likely include:

Ernie Rosenberg, President and CEO, American Cleaning Institute
Jennifer Abril, Executive Director, Fragrance Materials Association
Cal Dooley (President and CEO) (or me)
Christina Franz, American Chemistry Council
Mark Duvall, Beveridge and Diamond (outside counsel to ACC)

We have also made a request to meet with OMB to outline our arguments on this issue, but that meeting has not yet been scheduled.

Thanks very much for your help. If I can provide any additional information, please let me know. My direct dial number is 202 249 6400; my assistant, Susan Blanco, is at 202 249 6402.

This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 □ 2nd Street NE, Washington, DC 20002, www.americanchemistry.com

Jan Matuszko/DC/USEPA/US

01/13/2012 05:05 PM

To "Root, Patsy"

cc Maria Gomez-Taylor, "Blazer, Manja", Nancy Stoner, Robin Oshiro, Jeff Lape, Robert Wood, Lara Autry, Lemuel Walker, Lynn Zipf

bcc

Subject RE: IDEXX ATP Case No. N09-0004 request - Jan 11 2012

Dear Patsy,

This e-mail is in response to your e-mail below of 1/11/12 and your e-mail of 1/13/12 regarding the Environmental Protection Agency's (EPA) consideration of an analytical method for the determination of oil and grease developed by Orono Spectral Solutions (OSS) and approved by ASTM-International. While I have tried to contact you to discuss this matter, as requested in your most recent e-mail, I am responding in writing.

Based on the information included in your e-mails, there appears to be some confusion as to the timeline in which ASTM D-7575-10 was approved. ASTM-International approved ASTM D-7575-10 for measurement of oil and grease and submitted it to EPA in January 2010 well in advance of the cut-off date for inclusion in EPA's proposed September 2010 Methods Update Rule (MUR). Because EPA received this approved method well in advance of the cut-off date, the Agency discussed this ASTM method in the 2010 proposed MUR. As is frequently the case during comment periods, EPA received additional data and multiple comments specifically in support of this method. In order to respond to these comments, EPA performed additional analysis with these new data and also discussed its remaining concerns with ASTM-International and OSS. Based on these conversations (which are documented in the record for the NODA), ASTM and OSS agreed to further supplement the information and data they had submitted during the public comment period. In addition to submitting additional data, ASTM also agreed to revise some of the language in the method to clarify the scope and applicability and to add additional information to the sample pretreatment section. ASTM adopted these revisions in November 2011.

As is often the case when EPA receives additional information on an issue it discussed in a proposed rule, EPA's notice of data availability (NODA) that was published in the Federal Register on December 14, 2011 makes all of the additional data and EPA's reconsideration of ASTM D-7575-10 available for public comment. EPA will make a decision on the inclusion of this method in the list of approved methods at 40 CFR Part 136 once it reviews the public comments. The final decision on this ASTM method will be announced in a separate Federal Register notice at a later date, not in the upcoming final MUR.

As stated in responses to your previous inquiries, your method was not completed until after the cut-off date for the September 2010 proposed Method Update Rule. As such, it was not included in the proposed MUR and does not have the same standing as the aforementioned ASTM method. However, EPA plans to issue its next proposed Methods Update Rule in about a year and will discuss new alternate test procedures (ATPs) and new consensus standard methods that have been completed and submitted since the closing date for the current MUR including your fecal coliform testing method. Our goal is to reduce the length of time between Federal Register notices so that approved ATPs are incorporated in the Federal Register as quickly as possible. We look forward to working with you in the near future in this effort.

Jan Matuszko
Branch Chief
Engineering and Analytical Support Branch
Engineering and Analysis Division (4303T)
U.S. EPA
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
(202) 566-1035

"Root, Patsy"**Dear Maria, In order to facilitate a timel...****01/11/2012 01:06:55 PM**

From: "Root, Patsy" <Patsy-Root@IDEXX.com>
 To: Maria Gomez-Taylor/DC/USEPA/US@EPA
 Cc: "Blazer, Manja" <Manja-Blazer@idexx.com>, Nancy Stoner/DC/USEPA/US@EPA, Robin Oshiro/DC/USEPA/US@EPA, Jeff Lape/DC/USEPA/US@EPA, Robert Wood/DC/USEPA/US@EPA, Jan Matuszko/DC/USEPA/US@EPA, Lara Autry/RTP/USEPA/US@EPA, Lemuel Walker/DC/USEPA/US@EPA
 Date: 01/11/2012 01:06 PM
 Subject: RE: IDEXX ATP Case No. N09-0004 request - Jan 11 2012

Dear Maria,

In order to facilitate a timely response to my inquires regarding Colilert-18 for fecal coliform testing, I am following up on my e-mail below of 05-JAN 2012, which to date garnered no response. This time I am copying the broader group in hopes of facilitating a single, productive conversation and resolution by this Tuesday, January 17, 2012 .

To be clear, the expectation at this time, which you communicated to me in our phone conversation of 19 DEC 2011, is a resolution to our inquiry as a result of your conversation with the Branch Chief to determine what opportunities exist to have Colilert-18/Fecal coliform method published as soon as possible via either a NODA or proposal in the Federal Register. Please see e-mail below dated 19-DEC-2011.

The option of waiting another 1-3 years for the next Method Update Rule (per e-mail from Robin dated 03-JAN-2012) is, at this time, not only unacceptable in its own right, but also not providing the IDEXX developed method with a level playing field in comparison with other methods. As a reminder, IDEXX submitted our ATP on 10 FEB 2010 and received a positive letter of disposition on 29 JUNE 2010; "Review of Colilert®-18 Method (ATP Case No. N09-004)". This was all done by IDEXX strictly following EPA's protocols.

On the other hand, the currently proposed method in the 14-DEC-2011 NODA, ASTM 7575-10, has not undergone the same EPA processes, but has, none the less, achieved public comment status in their own NODA. This appears to be preferential treatment, especially given the parties involved with OSS and the fact that additional data collection was encouraged and allowed by EPA after the original MUR publication on September 23, 2010. The attached time line, derived from the EPA-HQ-OW-2010-0192 docket, clearly shows that (1) the ASTM method was given preferential treatment including conference calls and on-site visits by EPA representatives (2) OSS was allowed, even encouraged to have, additional time to collect and assess data and (3) even though version D7575-11 is described by ASTM in their Dec 5th 2011 letter, EPA published the current NODA as method D7575-10. Similar requests for conference calls or face-to-face meetings between IDEXX and EPA in order to more efficiently move the process forward were rejected – see e-mail correspondence in the second [PDF](#) attachment. All these events, meetings and allowances between OSS and EPA seem rather unusual and exceptional practice on EPA's behalf.

Certainly, I hope you will agree that the same opportunities should be available to all methods, and that is all that we are requesting at this time, nothing more, nothing less: the opportunity to abide by the

same rules as other method developers and timely publication of methods.

It is our hope that we can accomplish our goal with the US EPA in a cooperative manner. It is important for us to know the options available to us by the above deadline, since, among others, we plan to pursue this issue via the opportunity for Comments to docket EPA-HQ-OW-2010-0192, "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Notice of Data Availability", the deadline for which is already 13-FEB- 2012.

Your response **by January 17th** would once again demonstrate your positive commitment to this request, which you already indicated verbally in our conversation of 19 DEC 2011.

Respectfully submitted,
Patsy Root

Patsy Root
Senior Regulatory Affairs Specialist
IDEXX Labs, Inc.
One IDEXX Drive
Westbrook, ME 04072
207-556-8947
www.idexx.com/water

-----Original Message-----

From: Root, Patsy
Sent: Thursday, January 05, 2012 9:00 AM
To: 'Maria Gomez-Taylor'
Cc: Blazer, Manja; 'oshiro.robin@epa.gov'
Subject: FW: December 14th NODA -- follow-up

Dear Maria -

I am in hopes you had a restful Holiday season and a happy New Year.

Now that the Holidays have passed, I am looking forward to your pending recommendations on how the Agency will propose Colilert-18/Quanti-Tray for fecal coliform detection under current CWA testing. The option of waiting an additional 1-3 years to realize a return on our investment, and future investments, is not an acceptable option under the current circumstances

I appreciate your understanding and determination to remove or reduce regulatory barriers, allowing the innovation and research investment the Administrator speaks about so often. I would appreciate hearing back from you about our publication options by January 6th and I again thank you for your timely attention.

Respectfully,
Patsy

Patsy Root
Senior Regulatory Affairs Specialist
IDEXX Labs, Inc.

One IDEXX Drive
Westbrook, ME 04072
207-556-8947
www.idexx.com/water

-----Original Message-----

From: Robin Oshiro [mailto:Oshiro.Robin@epamail.epa.gov]

Sent: Tuesday, January 03, 2012 10:56 AM

To: Root, Patsy

Subject: Re: December 14th NODA

Hi Patsy,

I love use or lose. I hope you had a good holiday season. It would have been so nice if I could have included your method in the MUR proposal, as it would have saved me from responding to emails from people wanting to use the method.

However, as you saw from the proposal [FR 75(184):58039], the EPA administrator signed the proposal on 06 August 2010. As you well know, the process to get a proposal published is very long because it needs to go through multiple levels of review, comment, and approval. Thus, the cut off date for inclusion in a proposal is generally six months to a year before it's actually published.

The Notice of Data Availability (NODA) of December 14, 2011, is limited to one analytical method for the measurement of oil and grease that EPA had described in a previous notice (i.e., the methods update rule (MUR) proposal of September 23, 2010). Because your method was not included in that MUR proposal, it does not have the same standing as the aforementioned oil and grease method, and we cannot do a NODA for it.

However, please rest assured that your method is in the queue for the next MUR, which we plan to start work on immediately upon publication of the Final Rule for the current MUR.

Thanks.

Robin.

-----Original Message-----

From: Maria Gomez-Taylor [mailto:Gomez-Taylor.Maria@epamail.epa.gov]

Sent: Monday, December 19, 2011 12:17 PM

To: Root, Patsy

Cc: Blazer, Manja; Robin Oshiro

Subject: Re: December 14th NODA

Patsy,

Both the Branch Chief and I are out for the rest of the year. I can get back to you after the holidays.

Maria Gomez-Taylor, Ph.D.
1200 Pennsylvania Avenue
N.W. Washington, D.C. 20460
Phone: 202-566-1005

E-mail: gomez-taylor.maria@epa.gov

From: "Root, Patsy" <Patsy-Root@IDEXX.com>
To: Maria Gomez-Taylor/DC/USEPA/US@EPA
Cc: "Blazer, Manja" <Manja-Blazer@idexx.com>, Robin
Oshiro/DC/USEPA/US@EPA
Date: 12/19/2011 12:13 PM
Subject: FW: December 14th NODA

Dear Maria –

I wanted to thank you again for calling me regarding my e-mail to Robin today.

I also greatly appreciate your offer to discuss our situation with the Branch Chief to determine what opportunities exist to having the Colilert-18/Fecal method published via either a NODA or proposal in the FR.

It is important for us to know these options as we plan to pursue this issue to a good, positive conclusion as soon as possible. To that end, I would appreciate hearing back from you about our publication options by December 29th . Thank you.

Respectfully,

Patsy

Patsy Root
Senior Regulatory Affairs Specialist
IDEXX Labs, Inc.
One IDEXX Drive
Westbrook, ME 04072
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www.idexx.com/water

-----Original Message-----

From: Maria Gomez-Taylor [mailto:Gomez-Taylor.Maria@epamail.epa.gov]
Sent: Monday, December 19, 2011 12:12 PM
To: Root, Patsy
Cc: Blazer, Manja
Subject: Re: From IDEXX

Hi Patsy,

The National Technology Transfer and Advancement Act (NTTAA) requires EPA to use voluntary consensus standards in its regulatory activities

"unless to do so would be inconsistent with applicable law or otherwise impractical." Voluntary consensus standards include test methods and sampling procedures that are developed or adopted by voluntary consensus standard bodies such as ASTM and AOAC. Thus, EPA must consider voluntary consensus standards when updating regulatory requirements under part 136. However, EPA is not required to approve a standard if it does not meet the Agency's regulatory requirements.

We generally include language on NTTAA in proposals such as last year's MUR. The connection here is that the method in the NODA is an ASTM method. But, as stated above, we do not have to promulgate this or any other method from voluntary consensus organizations if it (the method) does not meet our requirements. In other words, ASTM approval does not simply EPA approval.

I hope this helps.

Maria Gomez-Taylor, Ph.D.
1200 Pennsylvania Avenue
N.W. Washington, D.C. 20460
Phone: 202-566-1005
E-mail: gomez-taylor.maria@epa.gov

From: "Root, Patsy" <Patsy-Root@IDEXX.com>
To: Maria Gomez-Taylor/DC/USEPA/US@EPA
Cc: "Blazer, Manja" <Manja-Blazer@idexx.com>
Date: 12/19/2011 11:47 AM
Subject: From IDEXX

Dear Maria -

Thank you for your call this morning regarding my e-mail to Robin. I appreciate you taking the time to talk with me.

One thing I still don't understand is how the National Technology Transfer and Advancement Act fits in with the NODA for the ASTM method 7575-10? I'm not familiar with this Act, nor did I see an explanation of the Act in the December 14th FR publication. Can you help me understand how this Act and the NODA fit together?

Thanks,
Patsy

Patsy Root
Senior Regulatory Affairs Specialist
IDEXX Labs, Inc.

One IDEXX Drive
Westbrook, ME 04072
207-556-8947
www.idexx.com/water

From: Root, Patsy

Sent: Monday, December 19, 2011 9:53 AM

To: 'oshiro.robin@epa.gov'

Subject: December 14th NODA

Importance: High

Dear Robin –

I am writing to you in response to the December 14th Federal Register posting titled: “Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Notice of Data Availability”. This NODA describes the new data for the previously dismissed ASTM D7575 oil and grease method to the current MUR (published September 23, 2010).

Your ATP acceptance letter regarding Colilert-18/Quanti-Tray for fecal coliform testing was received on June 29, 2010, well in advance of the MUR method submission date of August 31, 2010. Now that this NODA is open, we request that the Colilert-18 /Quanti-Tray ATP and data be given the same consideration as ASTM D7575. We request inclusion of Colilert-18 either under the current NODA or have an additional NODA opened specifically for Colilert-18/Quanti-Tray for fecal coliform testing at part 136.3.

Please feel free to call me to discuss this matter: 207-556-8947.

I would appreciate your response to this by December 29th, before we send in our official comments to the current NODA. Thank you.

Respectfully ,
Patsy

Patsy Root
Senior Regulatory Affairs Specialist
IDEXX Labs, Inc.
One IDEXX Drive
Westbrook, ME 04072
207-556-8947
www.idexx.com/water

-----Original Message-----

From: Gomez-Taylor.Maria@epamail.epa.gov [mailto:Gomez-Taylor.Maria@epamail.epa.gov]

Sent: Tuesday, December 06, 2011 3:47 PM

To: Walker.Lemuel@epamail.epa.gov

Cc: Root, Patsy; Matuszko.Jan@epamail.epa.gov; Oshiro.Robin@epamail.epa.gov

Subject: Re: 0900006480bbe1d5[1].pdf - Adobe Acrobat Standard

Hi Patsy,

This test method was discussed but not proposed in the 2010 Methods Update Rule (MUR). To my knowledge, this oil and grease method was never submitted to the Agency under the National ATP program. The method developer submitted the method to ASTM for review and approval. ASTM approved this oil and grease method last year; however, ASTM approval does not mean EPA approval. **{NOTE From PROOT: This ASTM method was proposed in the FR 8 days after this e-mail was received}**

I hope this helps.

Maria Gomez-Taylor, Ph.D.
1200 Pennsylvania Avenue
N.W. Washington, D.C. 20460
Phone: 202-566-1005
E-mail: gomez-taylor.maria@epa.gov

From: Lemuel Walker/DC/USEPA/US
To: "Root, Patsy" <Patsy-Root@IDEXX.com>
Cc: Jan Matuszko/DC/USEPA/US@EPA, Maria
Gomez-Taylor/DC/USEPA/US@EPA, Robin Oshiro/DC/USEPA/US@EPA
Date: 12/06/2011 01:41 PM
Subject: Re: 0900006480bbe1d5[1].pdf - Adobe Acrobat Standard

Dear Patsy

I sincerely apologize for the delay in responding to your email inquiry. However, I am going to forward your inquiry to the most appropriate EPA staff members that will better provide you with the most accurate response. By copy, either Jan Matuszko, EASB's Branch Chief and/or Maria Gomez-Taylor EASB senior chemist should be able to answer your question.

Regards,

Lem

From: "Root, Patsy" <Patsy-Root@IDEXX.com>
To: Lemuel Walker/DC/USEPA/US@EPA
Date: 11/11/2011 02:09 PM
Subject: 0900006480bbe1d5[1].pdf - Adobe Acrobat Standard

Lem –

Did this oil & grease method undergo a National ATP? I found this comment from a WA Telliard in the FR Docket (EPA-HQ-OW-2010) MUR.

Thanks,
Patsy(See attached file: 0900006480bbe1d5[1].pdf)

-----Original Message-----

From: Matuszko.Jan@epamail.epa.gov [mailto:Matuszko.Jan@epamail.epa.gov]

Sent: Thursday, November 10, 2011 3:37 PM

To: Root, Patsy
Cc: King.Ephraim@epamail.epa.gov; Autry.Lara@epamail.epa.gov; Walker.Lemuel@epamail.epa.gov; Blazer, Manja; Gomez-Taylor.Maria@epamail.epa.gov; Smith.Maryt@epamail.epa.gov; Oshiro.Robin@epamail.epa.gov
Subject: RE: IDEXX Labs ATP Case N09-004: Colilert-18/Quanti-Tray for fecal coliform detection in Wastewater - Follow-up Nov 10

Ms. Root,

Thank you for contacting us again about this issue. I apologize for our delay in responding to your request.

As you are likely aware, EPA's ATP program allows a developer to ask for review (not approval) of a new method or method modification. By statute, EPA can not include a method in 40 CFR Part 136 without first proposing it and providing an opportunity for public comment. The process associated with proposing and finalizing changes to 40 CFR Part 136 is resource intensive so EPA periodically proposes updates to 40 CFR Part 136 to incorporate new or modified methods, including reviewed ATPs. We refer to such updates as the Methods Update Rule (MUR). EPA will shortly promulgate changes to 40 CFR Part 136 that reflect its late 2010 MUR proposal. **Historically, EPA finalizes changes/additions to 40 CFR Part 136 approximately every three to four years.**

EPA recognizes the time and expense involved in developing new or modified methods. We are aware that, depending on where completion of an ATP review falls in our MUR cycle, it can be years before an ATP is proposed and ultimately promulgated. As such, we have been looking at ways to shorten the time period between MURs.

As you indicated below, in the interim, a facility may apply to an EPA Region for a limited use ATP approval letter, i.e. for use at that facility. Generally it is not necessary for the limited use ATP applicant to submit data, or do a side-by-side comparison, if the method has already been reviewed under the CWA ATP program. EPA's recently proposed MUR provided clarification on what is, and is not, required for

limited use ATPs. Based on comments received, once finalized, this clarification should minimize inconsistencies among Regions.

Jan Matuszko
Branch Chief
Engineering and Analytical Support Branch
Engineering and Analysis Division (4303T)
U.S. EPA
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
(202) 566-1035

From: "Root, Patsy" <Patsy-Root@IDEXX.com>
To: Ephraim King/DC/USEPA/US@EPA
Cc: Maryt Smith/DC/USEPA/US@EPA, Jan Matuszko/DC/USEPA/US@EPA,
Maria Gomez-Taylor/DC/USEPA/US@EPA, Robin
Oshiro/DC/USEPA/US@EPA, Lara Autry/RTP/USEPA/US@EPA, Lemuel
Walker/DC/USEPA/US@EPA, "Blazer, Manja"
<Manja-Blazer@idexx.com>
Date: 11/10/2011 01:42 PM
Subject: RE: IDEXX Labs ATP Case N09-004: Colilert-18/Quanti-Tray for
fecal coliform detection in Wastewater - Follow-up Nov 10

Dear Mr. King –

Good day to you.

I would like to follow-up on my e-mail of October 05, 2011 (please see below for reference).
Could you please advise on the Agency's:

- Course of action: who will be responsible for returning answers to us regarding the questions posed below?
- Response Time: Please include feedback on a specific time-line for inclusion of this method in the Federal Register.

IDEXX strictly adhered to Agency's ATP requirements, incurred significant new-method expenditures, taken on investigating the diverse Regional requirements and documented information so labs might adopt this as a compliance method. We understand and appreciate the role of the ATP process and it's place to protect both the environment and the public, but a lengthy time for inclusion in the Federal Register is a

barrier to both IDEXX and our customers.

Your responses will help IDEXX determine the return on our investments, course of action for job creation within IDEXX and our willingness to invest in innovative product development in the future.

As stated in my previous e-mail, we would welcome the opportunity to enter into discussion with EPA on how this process might be made more efficient and considerably shortened in the future.

Thank you, we look forward to your timely response.

Respectfully submitted,

Patsy

Patsy Root
Senior Regulatory Affairs Specialist
IDEXX Labs, Inc.
One IDEXX Drive
Westbrook, ME 04072
207-556-8947
www.idexx.com/water

From: Root, Patsy

Sent: Wednesday, October 05, 2011 9:45 AM

To: 'king.ephraim@epa.gov'

Cc: 'smith.maryt@epa.gov'; 'matuszko.jan@epa.gov';

'gomez-taylor.maria@epa.gov'; 'oshiro.robin@epa.gov';

'Autry.Lara@epamail.epa.gov'; Walker.Lemuel@epamail.epa.gov; Blazer, Manja

Subject: IDEXX Labs ATP Case N09-004: Colilert-18/Quanti-Tray for fecal coliform detection in Wastewater

Dear Mr. King –

Good day to you, my name is Patsy Root, Senior Regulatory Affairs Specialist at IDEXX Labs in Westbrook, Maine.

I am writing to you today to request specific additional information on ATP case N09-004; for reference, please see attached EPA letters dated June and July, 2010.

Back ground

IDEXX Labs strives to offer innovative products that allow labs to detect microorganisms in Water using rapid, accurate and more cost-effective methods. Developing and testing new products is both a significant financial and time commitment for IDEXX, but we are dedicated to performing to the best of our ability and within government requirements. Our goal to attain governmental approval is critical to

our customers; our methods must attain government approval in the US in order to be used for compliance purposes. New method development typically takes 2-3 years and many times it takes as long for a new method to be published and promulgated in the Federal Register. Doubling the time to publication places undue burden on method developers such as IDEXX, however; this presents an insurmountable barrier to small innovative companies.

In 2010, IDEXX performed a National ATP using our Colilert-18/Quanti-Tray method for detecting fecal coliforms in wastewater samples. The EPA confirmed the study met the objectives of the ATP and, at some future date, would publish the method at 40 CFR 136.3. Essentially, the method seemed to be 'approved', just awaiting EPA publication. Until such publication, the EPA Regions could, on a case by case basis, allow the method to be used.

Considerable time and resources were spent in my department contacting all the EPA Regional ATP coordinators for their guidance on alternative method adoption, each Region received Ms Oshiro's letters. We received 10 different Regional processes over the past months. Regions are not providing consistent requirements and customers are reticent to adopt this method until it is in the Federal register. Furthermore, some State permitting offices are also disinclined to allow labs to use the method until it is in the Federal Register.

Request

We respectfully request a specific time-line for inclusion of this method in the Federal Register. IDEXX strictly adhered to EPA ATP requirements, incurred significant new-method expenditures, taken on investigating Regional requirements and documented all information necessary for labs in each Region to adopt and use this as a compliance method. However, the barrier of Federal Register publication still exists.

Until such time the EPA decides to list this method in the Federal Register, IDEXX will not see a significant return on investments made to perform this National ATP. This sets a disturbing precedence for method developers when considering future, innovative method development. We would welcome the opportunity to enter into discussion with EPA on how this process might be made more efficient and considerably shortened in the future.

We look forward to hearing from you on the expected time-line for publication of Colilert-18/Quanti-Tray in the Federal Register and resulting ability of labs to adopt this method in full. Thank you for your time and attention. I will look forward to hearing from you soon.

Respectfully submitted,
Patsy Root

Patsy Root
Senior Regulatory Affairs Specialist
IDEXX Labs, Inc.
One IDEXX Drive
Westbrook, ME 04072
207-556-8947
www.idexx.com/water

-----Original Message-----

From: Oshiro.Robin@epamail.epa.gov [<mailto:Oshiro.Robin@epamail.epa.gov>]

Sent: Monday, March 01, 2010 2:35 PM

To: Root, Patsy

Subject: Re: IDEXX Fecal ATP

Hi Patsy,

At an absolute minimum, I think two months turn around time.

Here's how it goes. I read the report. The contractor reads the report. Then the contractor and I conference call to compare notes. We gin up a letter to you with questions and comments. You send a response. The contractor and I go over your response. Then maybe, we have a conference call with you to clarify. There's **no face-to-face. I don't like doing face-to-face** because I've learned that some vendors get confrontational, and, since I'm all **about treating everyone the same**, I opted to simply not do face-to-faces.

Robin.

[attachment "OSS ASTM 7575 development time-line 01102012-2.pdf" deleted by Jan Matuszko/DC/USEPA/US] [attachment "Re_ IDEXX Fecal ATP Oshiro email 01MAR2010.pdf" deleted by Jan Matuszko/DC/USEPA/US]

Jan Goldman-Carter
<goldmancarterj@nwf.org>

01/27/2012 01:57 PM

To Nancy Stoner, "joellen.darcy@us.army.mil",
"rock.salt@us.army.mil", "Gaffney-Smith, Margaret E",
Gregory Peck, LisaP Jackson, "perciasepe.rober@epa.gov"

cc

bcc

Subject FW: Field and Stream Piece on Wetlands Regulation by Bob Marshall...

Please see the Field and Stream piece below urging action on the "waters of the U.S." rule. As you can see, this piece has already been shared with CEQ, White House, Department of Agriculture, and Department of Interior officials, as well as the sportsmen-conservation group leadership.

Jan Goldman-Carter
Senior Manager, Wetlands and Water Resources
National Wildlife Federation
National Advocacy Center
901 E St, NW
Suite 400
Washington, DC 20004
202-797-6894
goldmancarterj@nwf.org
www.nwf.org/waters

From: Eric Washburn [mailto:ewashburn@bwstrategies.com]

Sent: Friday, January 27, 2012 12:43 PM

To: Whit Fosburgh; George Cooper; johntomke@aol.com; dhall@ducks.org; pschmidt@ducks.org; David Hoskins; Chris Wood; Jan Goldman-Carter; Adam Kolton; Gary Taylor; Ron Regan; Steve Moyer; Boots, Michael J.; Jensen, Jay; Carson, Jon; Shafroth, William; Bonnie, Robert; Ashe, D M; Robert Bendick; Christy Plumer; Glenn Prickett; Patel, Rohan

Subject: Field and Stream Piece on Wetlands Regulation by Bob Marshall...

Clean Water Finding Few Friends in Washington

■

January 25, 2012

Clean Water Finding Few Friends in Washington

by Bob Marshall

When it comes to wetlands protections, it's hard for sportsmen to find any heroes in Washington these days. We have a House majority that spent last year shouting its opposition to restoring protections to 20 million acres of vital [wetlands stripped by the Supreme Court](#), and vows to continue that assault this election cycle. And we have a president who makes a lot of noise about helping--but then doesn't follow through.

So as Congress returns to work this month, sportsmen's conservation groups find themselves fighting on two fronts in the battle to restore protections to those temporary and isolated wetlands. Here's the situation:

When the GOP blocked attempts to correct those court rulings with the proposed [Clean Water Restoration Act](#), conservationists were cheered when the Obama Administration stepped in last spring sending its agencies a proposed new wetland "guidance"--spelling out which wetlands they could protect. This wouldn't put protections back on everything, but it would help.

The next step would be the start of a legally required "rule-making process"--a series of hearings in which the administration laid out how the agencies could go about protecting those wetlands outlined in the guidance.

One year later nothing has happened.

That proposed guidance has never been made official--even after an extended comment period (which, by the way, wasn't legally required). And the rule-making process has never started.

So now we're entering an election cycle, one that promises to be especially nasty with some on the GOP side already (and incorrectly) [blaming regulations for the high unemployment rate](#). Sportsmen's groups expects the going to be especially tough.

The real fear is that the Obama Administration and congress people who had been acting as friends before the campaigns start will back off if they see supporting protection could cost them votes. You can expect the well-financed special interests opposed to these protections--the U.S. Chamber of Commerce, energy sectors and agriculture--to pour money into the issue trying to convince voters--and the candidates seeking their support--to oppose the regulations.

"The push back on this has been enormous," said Steve Kline, working the issue for the Theodore Roosevelt Conservation Partnership. "We don't expect any let up this year. We're really facing a deadline if the administration doesn't get moving on this."

Sportsmen can help by firing off letters and emails to their congressional reps--as well as the administration. You can find out how at www.contactingthecongress.org.

***** ATTACHMENT NOT DELIVERED

This Email message contained an attachment named
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which may be a computer program. This attached computer program
could
contain a computer virus which could cause harm to EPA's
computers,
network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses
introduced
into the EPA network. EPA is deleting all computer program
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sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate,
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rename the file extension to its correct name.

For further information, please contact the EPA Call Center at
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED

Douglas
Parsons/DC/USEPA/US
06/19/2012 05:42 PM

To "Jim Jones", "Louise Wise", "Sherry Sterling", "Wendy
Cleland-Hamnett", "Barbara Cunningham-HQ", "Jeff Morris",
"Priscilla Flattery", "Mr. Sven-Erik Kaiser", "Maria Doa"
cc
bcc
Subject Fw: Energy and Commerce Members Press White House
and EPA on Expansion of Federal Government's Role in
Natural Gas Regulation

FYI

From: Energy and Commerce News [EnergyandCommerceNews@mail.house.gov]
Sent: 06/19/2012 05:30 PM AST
To: undisclosed-recipients:
Subject: Energy and Commerce Members Press White House and EPA on Expansion of Federal Government's Role in Natural Gas Regulation

FOR IMMEDIATE RELEASE
June 19, 2012

CONTACT: Press Office
(202) 226-4972

Energy and Commerce Members Press White House and EPA on Expansion of Federal Government's Role in Natural Gas Regulation

Members Concerned with Obama Administration's Executive Order and its Potential Threat to State Authority and Subsequent Impact on Job Creation

WASHINGTON, DC □ Republican members of the House Energy and Commerce Committee are seeking answers about the president's recently issued Executive Order establishing an Interagency Working Group that will be involved in the regulation of hydraulic fracturing. Members wrote today to EPA Administrator Lisa Jackson and Chairwoman of the Working Group Heather Zichal requesting clarification of the Executive Order's intent and the role of the federal government in natural gas regulation. In particular, the letter questions how recent actions by the Environmental

Protection Agency to increase regulation of fracking are being coordinated with the Working Group, and whether they are consistent with efforts to support domestic energy production. States are currently the primary regulators of natural gas production and have helped ensure safe and responsible development during the recent natural gas boom. Members are concerned EPA's actions, whether consistent or inconsistent with the efforts of the Working Group, would expand federal regulatory authority, creating more red tape and bureaucracy, which could ultimately discourage energy production and job creation.

The Executive Order charges the Working Group to facilitate coordinated Administration Policy efforts to support safe and responsible unconventional natural gas development. However, the Executive Order flags augmenting State safeguards as a role for the Federal government. The Order is not clear on whether that Federal standard-setting role is in addition to or in lieu of the States' role as primary regulators. As this Federal augmenting role is mentioned as something apart from simply implementing Federal law, it requires particular explanation, wrote the members.

The letter requests a greater explanation of EPA's activities related to natural gas production and the Working Group's role in them. These include EPA's current study on drinking water and hydraulic fracturing, EPA's new chemical reporting requirements for hydraulic fracturing, and EPA's groundwater investigations under the Comprehensive Environmental Response Compensation and Liability Act.

For a full copy of the letter, click [here](#).

□□□

[Energy & Commerce Online](#) | [Press Release Permalink](#)



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If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED *****

EXHIBIT C

EPA-41

Jeff Lape/DC/USEPA/US

02/13/2012 03:30 PM

To Bob Sussman, Ann Campbell, Nancy Stoner

cc Crystal Penman, Martha Workman, Elizabeth Skane, Paul Shriver

bcc

Subject Fw: Meeting with Ron Nichols, LADWP

The General Manager of LA Water and Power will be meeting with you tomorrow at noon.

Paul Shriver and I will be attending, in listening and support roles.

Paul has prepared a one pager (attached) for your background.

The notable items are:

- OST staff understanding of LADWP power plants
- the routine communication with the LADWP (katherine Rubin)

Thanks

Jeff

(b)
(5)Deliberative

LADWP one pager.docx

Jeffrey Lape

Acting Director, Office of Science and Technology

Office of Water

Room 5231A, EPA West (Connecting Wing)

U.S. Environmental Protection Agency (Mailcode 4301T)

Washington DC 20460

Phone: (202) 566-0480

Fax: (202) 566-0441

----- Forwarded by Jeff Lape/DC/USEPA/US on 02/13/2012 03:25 PM -----

Meeting with Ron Nichols, LADWP

Tue 02 14 2012 12:00 PM - 12:45

PM

Attendance is for Jeff Lape

Chair: Bob Sussman DC USEPA US

Sent By: Donald Maddox DC USEPA US

Location: ARN 3530

Required:	ALM vnf.com, Ellen Gilinsky/DC/USEPA/US EPA, Jeff Lape/DC/USEPA/US EPA, Robert Wood/DC/USEPA/US EPA, TAN vnf.com
Optional:	Ann Campbell/DC/USEPA/US EPA

Description

(b) (5)

LADWP one pager.docx



USEPA Letter 1-23-12.pdf OTC EPA Paul Shriner Enclosures 1 - 4.pdf

Thanks again for agreeing to meet with the General Manager of the Los Angeles Department of Water and Power next Tuesday morning. We look forward to meeting with you then to discuss issues related to LADWP's interest at the Navajo Generating Station.

In discussions this week with the LADWP folks, it has come to my attention that LADWP is planning to raise at least one additional power plant matter relating to the pending EPA rules for regulating cooling water intake structures under section 316(b) of the Clean Water Act. As reflected in the attached materials, LADWP has concerns with the impingement mortality compliance schedule established under the proposed 316(b) rule given the ambitious plan for upgrading the its electric generating system. Most notably, LADWP has plans to eliminate once-through-cooling for all of its gas-fired generation located in the South Coast within the shortest time possible and to install new technology that far exceeds the performance standards of the proposed rule. However, due to the magnitude of this project (which also entails the repowering / replacement of 85% of LADWP's in-basin generation), LADWP is seeking some flexibility in the manner and time frame by which LADWP demonstrates compliance with the final Federal 316(b) requirements once they are finalized later this year.

I hope that this information is helpful to you in advance of our discussion next Tuesday. I wanted to be sure that you were aware of LADWP's interest in discussing this second matter with you to ensure that you would have the opportunity to consult with relevant EPA staff in advance of our meeting.

We look forward to seeing you on the 14th. Please let me know if you have any questions or concerns regarding this matter in advance of our meeting next week.

Thanks.

From: "Alan Mintz" <ALM@vnf.com>
To: Bob Sussman/DC/USEPA/US@EPA
Cc: Donald Maddox/DC/USEPA/US@EPA, "Richard Agnew" <raa@vnf.com>, "Tracy Nagelbush" <TAN@vnf.com>
Date: 01/17/2012 04:54 PM
Subject: Meeting with Ron Nichols, LADWP

On Tuesday, February 14, and Wednesday, February 15, Ron Nichols, the General Manager of the Los Angeles Department of Water & Power, will be

in Washington, D.C. for a series of meetings. Mr. Nichols and I would greatly appreciate an opportunity to meet with you when he is in D.C.

The Los Angeles Department of Water & Power is the nation's largest municipal utility, serving the water and electricity needs of the City of Los Angeles. LADWP has a couple of issues that warrant further discussion with you.

First, Mr. Nichols would like to discuss EPA's latest actions to regulate water intake from cooling towers, known as the 316(b) rule. California, as you might expect, was quick to take action on regulating power facilities that use water intake for cooling purposes. LADWP has a time line with which it is currently complying under state regulations and suggests that it should be able to work under that time line and not the proposed federal time line.

Mr. Nichols would also like to discuss its interest in the Navajo Coal Plant. The EPA's decision on designating "Best Available Retrofit Technology" and the designation of coal ash as a hazardous or solid waste will have significant impacts on LADWP's ability to divest itself of its interest in the facility.

I hope that we can find a time on either February 14 or 15 to meet to discuss these matters. As of now, Mr. Nichols' schedule is flexible, so please let me know what time or times on either of those dates might work best for you.

I look forward to seeing you then. Thanks, as always, for your time and consideration of this request.

Personal Notes

EPA-588

Daniel
Hopkins/DC/USEPA/US
12/07/2012 02:16 PM

To Don Zinger
cc Larke Williams
bcc
Subject " Rice Rule " Landmark FOIA search for Janet

**REMINDER and UPDATE: NTAA Executive Committee Meeting
Monday, January 9, 2012 at 12 Noon (Mountain)**

**Mon 01/09/2012 2:00 PM - 4:00
PM**

Attendance is for Janet McCabe

Chair: snowmobiler@sbcglobal.net
Sent By: "Jennifer K. Youngblood" <[\(b\)\(6\)](mailto:anuqa.northstar@b(6))>
Location: Call In: [\(b\)\(6\)](tel:(b)(6)) Passcode: [\(b\)\(6\)](tel:(b)(6)) # GTM ID: [\(b\)\(6\)](tel:(b)(6))

Required:

angela.benedict@srmt-nsn.gov, Bill.Thompson@penobscotnation.org, air@lldrm.org,
bhoover@ldftribe.com, cody.braun@potawatomi.org, hwaquiu@pechanga-nsn.gov,
katerenw@nc-chokeee.com, greenleaf@kootenai.org, lcook@pci-nsn.gov,
lweeks@nemont.net, randya@cskt.org, rkalistook@nativecouncil.org, santeeair@gpcom.net,
[\(b\)\(6\)](mailto:samkitto2@b(6)), scott.weir@sacfoxenviro.org, [\(b\)\(6\)](mailto:sflensburg@b(6)),
sflensburg@bbna.com, ssmallwood@pechanga-nsn.gov,
Tammy.K.Belone@jemezpuablo-drp.org, toutman@wstribes.org, bgruenig@ntec.org,
BShade@ntec.org, JPardilla@ntec.org, KCronin@ntec.org, Ondrea.Barber@ntec.org

Optional:

Christopher.Lee@nau.edu, mehrdad.khatibi@nau.edu, mccormack.angel@epa.gov,
Harmon.Darrel@epa.gov, mccabe.janet@epa.gov, McKelvey.Laura@epa.gov

Time zones:

This entry was created in a different time zone. The time in that time zone is: Mon 01/09/2012
2:00 PM EST 4:00 PM EST

Description

When: Monday, January 09, 2012 12:00 PM-2:00 PM (UTC-07:00) Mountain Time (US & Canada).

Where: Call In: [\(b\)\(6\)](tel:(b)(6)) 3 Passcode: [\(b\)\(6\)](tel:(b)(6)) # GTM ID: [\(b\)\(6\)](tel:(b)(6))

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Greetings all -

Attached are the agenda, the November call minutes and the action item matrix with items from the December face to face included. The notes from the December face to face call are almost complete and should be to you by the end of this week. Below is the GTM information for the call today.

See you there!

1. Please join my meeting.


[\(b\)\(6\)](https://www1.gotomeeting.com/(b)(6))


2. Join the conference call:

Call In Number: (b)(6)

Conference Code: (b)(6)

Meeting ID: (b)(6)

GoToMeeting®  - 2012_01_09_NTAA Action Item Matrix_.pdf Don - this is the document where Rice is referenced (page 2).

 - 2012_01_09_EC_Call Agenda_Draft.pdf  - 2011_11_21 EC Call Minutes_Draft.pdf  - 2011_11_21_EC Call Summary_Draft.pdf

Personal Notes

NTAA Executive Committee Monthly Call (10 am AK, 11 am Pacific, 1 PM Central, 2 PM Eastern)

Mon 02/27/2012 2:00 PM - 4:00 PM

(Repeats)

Attendance is for Janet McCabe

Chair: snowmobiler@sbcglobal.net

Sent By: "Jennifer K. Youngblood" <anuqa.northstar@epa.gov> (b)(6)

Location: REMINDER: Number: (b)(6) Passcode: (b)(6) GTM ID: (b)(6)

Required:	angela.benedict@srmt-nsn.gov, Bill.Thompson@penobscotnation.org, air@ldrm.org, bhoover@ldftribe.com, cody.braun@potawatomi.org, hwaquiu@pechanga-nsn.gov, katerenw@nc-chokeee.com, greenleaf@kootenai.org, lcook@pci-nsn.gov, lweeks@nemont.net, randya@cstkt.org, rkalistook@nativecouncil.org, samkittot2(b)(6), scott.weir@sacfoxenviro.org, sflensburg(b)(6), sflensburg@bbna.com, ssmallwood@pechanga-nsn.gov, Tammy.K.Belone@jemezpuablo-drp.org, twalea@spokanetribe.com, Harrison.Jed@epa.gov
Optional:	bgruenig@ntec.org, BShade@ntec.org, JPardilla@ntec.org, KCronin@ntec.org, Ondrea.Barber@ntec.org, mccormack.angel@epa.gov, mccormack.ange(b)(6), Harmon.Darrel@epa.gov, mccabe.janet@epa.gov, McKelvey.Laura@epa.gov, colon.toni@epa.gov, Laura McKelvey/RTP/USEPA/US, Toni Colon/RTP/USEPA/US, Jed Harrison/LV/USEPA/US
Repeats:	
Time zones:	This entry was created in a different time zone. The time in that time zone is: Mon 02/27/2012 12:00 PM MST2:00 PM MST

Description

When: Monday, February 27, 2012 12:00 PM-2:00 PM (UTC-07:00) Mountain Time (US & Canada).
Where: REMINDER: Number: (b)(6) Passcode: (b)(6) GTM ID (b)(6)

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Greetings all -

Attached is an update meeting information for today Monday, February 27, 2012 at Noon Mountain (10 am AK, 11 am Pacific, 1 PM Central, 2 PM Eastern).

Attached is the agenda, the minutes and summaries from the in-person meeting in December and the call in January as well as the expert topic list discussed in December and a second sending of Jed Harrison's slides for today. The most recent action item matrix is also attached.

If you have any questions, please let me know.

Jen

1. Please join my meeting, Monday, February 27, 2012 at 11:00 AM Mountain Standard Time.

[https://www1.gotomeeting.com/\(b\)\(6\)](https://www1.gotomeeting.com/(b)(6))


2. Join the conference call:

Call In Number: (b)(6)

Conference Code: (b)(6)

Meeting ID (b)(6)

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Online Meetings Made Easy™  - NTAA Action Item Matrix 2012 - Feb2012 Call.pdf **Don - this is the document where Rice is referenced (page 2)**



- Air Topic Areas for EC Expertise_Draft.pdf



- 2012_02_27_EC_Call Agenda_Draft.pdf



- 11_12_6_8_EC_Meeting Summary_Draft.pdf



- 2011_12_6_8_EC_Meeting_Notes_Draft.pdf



- 2011_01_09_EC Call Minutes_Draft.pdf - 2012_01_09_EC Call Summary_Draft.pdf -
6_NTAA slides IED overview 2 23 12.pptx

Personal Notes

UPDATED WITH ATTACHMENTS (note time change due to NAAQS Call): NTAA Executive Committee Call Wednesday May 9, 2012 (10 am Alaska, 11 am Pacific, 12 Noon Mountain, 1 pm Central, 2 pm Eastern)

Wed 05/09/2012 2:00 PM - 3:00 PM

Attendance is for Janet McCabe

Chair: snowmobiler@sbcglobal.net

Location: (b)(6) Passcode: (b)(7)(C) # GTM ID (b)(6)

Required:

angela.benedict@srmt-nsn.gov, Bill.Thompson@penobscotnation.org, air@ldrm.org, bhoover@ldftribe.com, cody.braun@potawatomi.org, hwaquiu@pechanga-nsn.gov, katerenw@nc-chokeee.com, greenleaf@kootenai.org, lweeks@nemont.net, rmccullers@pci-nsn.gov, randya@cskt.org, rkalistook@nativecouncil.org, samkitto2(b)(6), scott.weir@sacfoxenviro.org, sflensburg(b)(6), sflensburg@bbna.com, ssmallwood@pechanga-nsn.gov, Tammy.K.Belone@jemezpuablo-drp.org, twalea@spokanetribe.com, scott.weir@ktik.nsn.gov

Optional:

Ondrea.Barber@ntec.org, Ondrea.barbe(b)(6), mccormack.angel@epa.gov, mccormack.ange(b)(6), Harmon.Darrel@epa.gov, wilson.erika@epa.gov, mccabe.janet@epa.gov, Harrison.Jed@epa.gov, McKelvey.Laura@epa.gov, tapia.rosalva@epa.gov, colon.toni@epa.gov, bago_ail(b)(6), KCronin@ntec.org

Time zones:

This entry was created in a different time zone. The time in that time zone is: Wed 05/09/2012 2:00 PM EDT 3:00 PM EDT

Description

When: Wednesday, May 09, 2012 12:00 PM-1:00 PM (UTC-07:00) Mountain Time (US & Canada).

Where: (b)(6) Passcode: (b)(6) GTM ID (b)(6)

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Greetings -

The EC call was moved up 1 hour to the regular time of Noon Mountain since there is a NAAQS call at 1 PM Mountain time. Attached you will find the agenda, draft slides and the NAAQS call slides for after the EC call. If you have any questions, please let me know.

Thanks!

Jen

1. Please join my meeting.

<https://www1.gotomeeting.com/join/123456789>


2. Join the conference call:

Call In Number: (b)(6)

Conference Code: (b)(6)

Meeting ID: (b)(6)

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Online Meetings Made Easy™  - 2012_NTFTulsa_DRAFT.pptx **Don - this is the document where Rice is referenced (slide 10)**



- 2012_05_09 EC Call Agenda.docx



- Tribal Info Mtg PM NAAQS May 9 2012.pdf

Personal Notes

EPA-587

Daniel Hopkins/DC/USEPA/US

12/07/2012 02:10 PM

To Don Zinger

cc Larke Williams

bcc

Subject " Portland Cement " Landmark FOIA search for Janet

Meeting with INGAA on Oil and Gas NSPS

Tue 02/07/2012 11:00 AM - 11:45

AM

Attendance is for Janet McCabe

Chair: Gina McCarthy/DC/USEPA/US

Sent By: Cynthia Browne/DC/USEPA/US

Location: 1200 Pennsylvania Avenue, NW, Ariel Rios North, ARN-OAR-Room 5415, Rooms: ARN-OAR-Room-5415/DC-ARN-OAR@EPA
 Washington, DC 20460 conference: (b)(6)
 access (b)(6)

Required:

Alison Davis/RTP/USEPA/US@EPA, Bruce Moore/RTP/USEPA/US@EPA, David Cozzie/RTP/USEPA/US@EPA, Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, Judy.Neason@Williams.com, Paul Gunning/DC/USEPA/US@EPA, Peter South/RTP/USEPA/US@EPA, Peter Tsirigotis/RTP/USEPA/US@EPA, Sarah Dunham/DC/USEPA/US@EPA, Steve Page/RTP/USEPA/US@EPA, Suzanne Waltzer/DC/USEPA/US@EPA

Optional:

Bill Harnett/RTP/USEPA/US@EPA, Cindy Huang/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Emily Atkinson/DC/USEPA/US@EPA, Jean Walker/RTP/USEPA/US@EPA, Joyce Crowley/DC/USEPA/US@EPA, Kirsten King/DC/USEPA/US@EPA, Kristina Friedman/DC/USEPA/US@EPA, Lala Alston/RTP/USEPA/US@EPA, Maria Sanders/RTP/USEPA/US@EPA, Tina Murphy/DC/USEPA/US@EPA

Description

Directions: If you come by Metro the Federal Triangle metro stop is directly below the building entrances. You would leave the metro station and go up all three sets of escalators and turn right. You will see a set of stairs and glass Doors with EPA Signified on Glass. That is Ariel Rios North.

If you are coming by taxi, you would want to be dropped off on 12th NW, between Constitution Ave and Pennsylvania Ave. It is almost exactly half way between the two avenues on 12th. From 12th Street, facing the building with the EPA and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left. This again will be the North Lobby of the Ariel Rios bldg.

Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. Let the guards know that you were instructed to call Audrey Walls at 564-7400. If you are travelling in a large group, you may want to arrive 10-15 minutes early in order to be on time for the meeting.

Mr. Zinger and Ms. Huang,

Greetings. I am writing to request a meeting between the Interstate Natural Gas Association of American (INGAA) and Ms. McCarthy and her staff to discuss our concerns and suggestions for the proposed Oil & Gas NSPS rules. INGAA is a trade association representing interstate natural gas pipelines and I work for one of the member companies, Williams. We would like to schedule the meeting at the earliest date and time that is convenient for Ms. McCarthy, preferably **before February 9**. I've attached a copy of a letter we submitted on October 11 that highlights our serious concerns as well as our more detailed comments filed in November. We previously had a very productive meeting with the technical staff at Research Triangle and greatly appreciate the time and attention of EPA's staff.

Please let me know what date and time works best for Ms. McCarthy sometime between now and February 9. An hour should be sufficient; however, we would be happy to spend additional time answering any questions the staff may have.

Regards,
Judy Neason

*Judy Neason
Director, Regulatory Affairs
Williams
1627 Eye Street, NW Suite 900
Washington, D.C 20006
202.833.8994
202.258.2482*

judy.neason@williams.com

2 attachments



INGAA Letter to GMcCarthy Oil & Gas NSPS.pdf



INGAA Comments_Subpart OOOO and HHH Rules_Final_112211.pdf

Portland

Cement is referenced in these comments . The reference comes on page 27, and is very inconsequential .

Personal Notes

Rescheduled: Reminder: NTAA - EPA Air Policy Call 3/29/2012 (10 am AK, 11 am Pacific, 12 noon Mountain, 1 pm Central, 2 pm Eastern)

Thu 03/29/2012 2:00 PM - 3:00**PM****Attendance is required for Janet McCabe****Chair:** snowmobiler@sbcglobal.net**Location:** Meeting ID: (b)(6) Call In Number: (b)(6) Conference Code: (b)(6)

snowmobiler@sbcglobal.net snowmobiler has rescheduled this meeting. You have not yet responded.

Required:

cmiller@hoopa-nsn.gov, hhals@jamestowntribe.org, hwaqui@pechanga-nsn.gov, hlenz@sbtribes.com, isaacajunby(b)(6),
 jtenorio@puebloofacoma.org, jackbutler@ctuir.com, jcleveland.nuk(b)(6), jluedecke@quapawtribe.com, Jpayne@morongo-nsn.gov,
 jmstroble@thhnw.org, mccabe.janet@epa.gov, jpruner@delawarenation.com, jay.littlewolf@cheyennenation.com, Harrison.Jed@epa.gov,
 jgodwin@redlakenation.org, jhowe@lrboi.com, jhostler@yuroktribe.nsn.us, johnab@nezperce.org, bago_air(b)(6),
 julies@nezperce.org, kbrosemer@saulttribe.net, c2nites2000@yahoo.com, greenleaf@kootenai.org, kimberly_abraham03(b)(6),
 kris.ray@colvilletribes.com, khunder@southern-ute.nsn.us, lcook@pci-nsn.gov, McKelvey.Laura@epa.gov, williams@gilanet.net,
 lhiggins@cdatribe.com, environmental@katyaaq.org, lweeks@nemont.net, environmental@noorvik.org, lhowell@sbtribes.com,
 lorinda.sam@tonation-nsn.gov, mduran@puebloofpojoaque.org, mansel.nelson@nau.edu, mark.parrish@pokagonband-nsn.gov,
 marvin@wabanaki.com, Mary.Basballe@puyalluptribe.com, maryf@nezperce.org, mel@lppsr.org, mel.joseph@lppsr.org,
 Melinda.Ronca-Battista@nau.edu, mboggs@poncatribes-ne.org, michael.wynn@chukchansi.net, millie.hawley(b)(6),
 myla.kelly@montana.edu, natalene.cummings@fcpotawatomi-nsn.gov, airquality@badriver-nsn.gov, naguilar@wrpt.us, noelle@yakama.com,
 malutiq@gci.net, Ondrea.Barber@ntec.org, Ondrea.barber(b)(6), patricia.ellsworth@nau.edu, nvhpb(b)(6),
 gw.mdnr@meskwaki-nsn.gov

Optional:

rjconchojr@puebloofacoma.org, JackButler@ctuir.org, Jed Harrison/LV/USEPA/US, ColetteCoiner@ctuir.org, Laura
 McKelvey/RTP/USEPA/US

Time zones:

This entry was created in a different time zone. The time in that time zone is: Thu 03/29/2012 2:00 PM EDT3:00 PM EDT

Description

When: Thursday, March 29, 2012 12:00 PM-1:00 PM (UTC-07:00) Mountain Time (US & Canada).

Where: Meeting ID: (b)(6) Call In Number: (b)(6) Conference Code: (b)(6)

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Please join the NTAA - EPA Air Policy Call on Thursday, March 29, 2012 at 12:00 PM Mountain Daylight Time.

10 am AK, 11 am Pacific, 1 pm Central, 2 PM Eastern time

[\(b\)\(6\)](https://www1.gotomeeting.com/j/(b)(6))


2. Join the conference call:

Call In Number: (b)(6)

Conference Code: (b)(6)

Meeting ID: (b)(6)

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Online Meetings Made Easy™  - OAQPS Rule Listing for Tribes (3 9 12).xlsx - **Portland Cement is referenced in this document , cell 38.**



- NTAA_EPA_Call_Agenda_29_Mar_2012_Draft.pdf



- Tribal Consultation.pptx

Portland Cement Association's Government Affairs Council Meeting

Wed 07/11/2012 10:00 AM - 10:30
AM

Chair: **Janet McCabe/DC/USEPA/US**

Sent By: **Emily Atkinson/DC/USEPA/US**

Location: 500 New Jersey Avenue, N.W., 7th Floor

Required:	OAR Invitations@EPA
Optional:	Kirsten King/DC/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA

Description

Greg,

Just to confirm our conversation this afternoon, Janet will plan to attend the meeting from 10 - 10:30am and will arrive by 9:45am to clear building security. At this time she does not plan on bringing anyone with her to the meeting, but if that changes I will let you know.

Feel free to contact me directly if I can be of further assistance.

Emily

Emily Atkinson
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5426K, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-7403
Email: atkinson.emily@epa.gov

sure/

Emily, Sharon--another one for the calendar.

Janet McCabe
Principal Deputy Assistant Administrator
Office of Air and Radiation, USEPA
Room 5426K, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

Laura Vaught

Great thanks! Janet - call me, and I can give you back story.

06/18/2012 04:43:41 PM

From: Laura Vaught/DC/USEPA/US
To: Janet McCabe/DC/USEPA/US
Cc: Joseph Goffman/DC/USEPA/US@EPA
Date: 06/18/2012 04:43 PM
Subject: Re: Fw: Speaking Invitation for Joe Goffman

Great thanks!

Janet - call me, and I can give you back story.

OK if I just loop you in with Greg and tell him that you can plan to do it?

Janet McCabe

Sure thing. Let's let Gina know, but I can plan to do this.... Janet McCabe

06/18/2012 09:34:12 AM

From: Janet McCabe/DC/USEPA/US
To: Joseph Goffman/DC/USEPA/US@EPA
Cc: Laura Vaught/DC/USEPA/US@EPA
Date: 06/18/2012 09:34 AM
Subject: Re: Fw: Speaking Invitation for Joe Goffman

Sure thing. Let's let Gina know, but I can plan to do this....

Janet McCabe
Principal Deputy Assistant Administrator
Office of Air and Radiation, USEPA
Room 5426K, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206
mccabe.janet@epa.gov

Joseph Goffman

You better than me, I think. Thanks. ----- Original Message -----

06/18/2012 08:39:47 AM

From: Joseph Goffman/DC/USEPA/US
To: "Janet McCabe" <McCabe.Janet@epamail.epa.gov>
Date: 06/18/2012 08:39 AM
Subject: Fw: Speaking Invitation for Joe Goffman

You better than me, I think. Thanks.

From: Laura Vaught
Sent: 06/18/2012 08:37 AM EDT
To: Joseph Goffman
Subject: Fw: Speaking Invitation for Joe Goffman

I left you a voice mail about this too - can you give me a call about it today?

Thx.

From: "Scott, Greg" [gscott@cement.org]
Sent: 06/18/2012 07:26 AM EST
To: Laura Vaught
Cc: "Scott, Greg" <gscott@cement.org>
Subject: Speaking Invitation for Joe Goffman

Laura – following up on our telephone conversation last week, I would like to extend an invitation to Joe Goffman to speak to the Portland Cement Association's Government Affairs Council meeting on Wednesday, July 11, 2012. PCA's GAC will be meeting in PCA's D.C. offices at 500 New Jersey Avenue, N.W. on 7/11 from 10 a.m. to 3 p.m. and we should be able to accommodate Joe's schedule just about any time during that window.

PCA's GAC is the internal committee that recommends to PCA's governing body, the PCA Executive Committee, the positions that PCA should take on all public policy issues, including federal and state legislation and regulation with respect to air quality and emissions from our cement manufacturing plants, as well as many other areas of public policy.

Since I joined PCA at the beginning of the year, I believe that a new, positive dialogue has been established between the cement industry and EPA, evidenced primarily through the settlement of the cement NESHAP litigation and the joint path forward toward a new proposed and final set of regulations. I see Joe's willingness to speak to our GAC as a further step in the development of this positive dialogue.

I would anticipate that Joe would speak, either extemporaneously or with a formal presentation, for approximately 15 minutes and then take questions for another 15 minutes. Our GAC meetings are informal, with committee members seated around a conference table at our offices – no lecterns or large audiences involved here.

Please let me know if you have questions or need additional information. I sincerely hope that Joe can join us on July 11th.

In advance, many thanks and thank you for facilitating this invitation to Joe.

Greg

Gregory M. Scott
Senior Vice President, Government Affairs
Portland Cement Association
500 New Jersey Avenue, N.W., 7th Floor
Washington, D.C. 20001-2005
202-408-9494 Ext. 113
gscott@cement.org

EPA-586

Amit
Srivastava/DC/USEPA/US
11/02/2012 05:03 PM

To Don Zinger
cc Daniel Hopkins
bcc
Subject Gina Boiler MACT FOIA Search 10 Documents; 5 responsive

Meeting with Manufacturing Action Council and Regulatory Improvement Council

Fri 07/20/2012 10:00 AM - 10:40 AM

Chair: Gina McCarthy/DC/USEPA/US
Sent By: Cindy Huang/DC/USEPA/US
Location: Ariel Rios North room 5415, Rooms: ARN-OAR-Room-5415/DC-ARN-OAR@EPA
1200 Pennsylvania Ave.,
NW, Washington, D.C.

Required:	Janet McCabe/DC/USEPA/US@EPA, Jim DeMocker/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, ssobeck@wvalisllc.com, wvalis@wvalisllc.com
Optional:	Cynthia Browne/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Emily Atkinson/DC/USEPA/US@EPA, Mary Resendez/DC/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA

Description

Participants:

Charles Johnson, Vice President, Environment, Health & Safety, The Aluminum Association
Ross Eisenberg, Vice President for Energy & Resources Policy, National Association of Manufacturers
Quin Shea, VP, Environment, Edison Electric Institute
Keith Belton, Director of Government Affairs, The Dow Chemical Company
John Wetzel, Vice President, Congressional Affairs, Association of American Railroads
Rick Shelby, VP, American Gas Association
Diane Shea, Director, Environment & Energy Programs, The American Council of Engineering Companies
Mark Collatz, Director of Government Relations, Adhesive and Sealant Council
Wayne Valis, President, Valis Associates
Sarah Sobeck, Director of the Regulatory Improvement Council (RIC), Valis Associates

Air Issues the Council Members are currently concerned with:

- Coordination of timelines and deadlines for the several air quality and GHG emissions regulations promulgated or to be promulgated in the upcoming months.

- EPA proposals to establish Uniform Air Emission Standards for Tanks/Loading, Equipment Leaks, and Control Devices
- Boiler MACT
- Utility MACT



The Honorable Gina McCarthy 5.12.docx



Manufacturing Action Council_Spring_2012_Membership.pdf

Personal Notes

SPEECH: American Iron and Steel Institute Environment Committee meeting

Tue 05/01/2012 12:00 PM - 1:00 PM

Attendance is for Gina McCarthy

Chair: **OAR Invitations**

Sent By: **Cindy Huang/DC/USEPA/US**

Location: 25 Massachusetts Ave., NW, Washington, D.C.

Required:	Gina McCarthy/DC/USEPA/US@EPA
Optional:	Kirsten King/DC/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA

Description



Cover Sheet - Am Iron & Steel Institute.docx

From: Peter Pagano <ppagano@steel.org>
To: Cindy Huang/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA
Date: 03/30/2012 12:55 PM
Subject: FW: Speaking Request for May 1, 2012

Cindy and Don,

Thanks again for your efforts in putting together our meeting with Gina today. Just wanted to give you a bit more background on the email to her regarding the speaking request...At the close of the meeting I asked her if she would speak at AISI's next Environment Committee meeting in DC on May 1. She told me to send her an email and she would see what she could do. FYI....this will likely be our Cmtee's only meeting in DC this year. It's all day May 1 and the morning of May 2...so while I suggested lunch on May 1 we have flexibility to fit her in where she is able including dinner on the 1st or breakfast on the 2 or various times in between....as for remarks ...pretty much open to what she wants to talk about but would ask she leave time for q/a....total time commitment could be an hour ...please let me know what other information you may need....

Have a good weekend and I will be in touch.

Peter Pagano
Vice President, Environment/Public Policy
American Iron and Steel Institute
25 Massachusetts Ave, NW
Washington, DC 20001
202-452-7122

From: Peter Pagano
Sent: Friday, March 30, 2012 12:53 PM
To: 'Mccarthy.gina@Epa.gov'
Cc: 'Huang.cindy@Epa.gov'; Don Zinger
Subject: Speaking Request for May 1, 2012

Hi Gina,

Thank you for taking the time to speak with us today on steel industry issues that are impacted by the Boiler MACT proposed rule. We appreciate the efforts of you and your staff to understand our concerns. In follow up to our meeting we will continue our discussions with OAQPS staff in RTP to further work through these issues.

In addition, the purpose of this message is to follow up on the possibility of you speaking at the next meeting of the American Iron and Steel Institute's (AISI), Environment Committee in Washington, DC.

As the Assistant Administrator for the Office of Air and Radiation we would like you to be the featured speaker during the lunch session. The session is scheduled from Noon until 1:00 pm on May 1, at our offices at 25 Massachusetts Ave, NW. However, if there is a more convenient time in your schedule on either May 1 or 2, AISI will work closely with you to adjust the timing of our program to have you participate.

As you know, AISI represents the North American steel industry and includes member companies accounting for approximately 80% of the U.S. steelmaking capacity with facilities located in 43 states. The Environment Committee is composed of the senior environmental officers for the member companies. As to the subject of your remarks, we would be interested in hearing how the industry can work with the Administration to strengthen manufacturing competitiveness in America while also seeking ways to reduce its environmental footprint.

Thank you again for your time today as well as your consideration of this speaking request, and we hope you will be able to join us.

Best regards,

Peter Pagano
Vice President, Environment/Public Policy
American Iron and Steel Institute
25 Massachusetts Ave, NW
Washington, DC 20001
202-452-7122

Personal Notes

----- Forwarded by Amit Srivastava/DC/USEPA/US on 11/02/2012 04:57 PM -----

Meeting with CIBO

Fri 05/04/2012 10:00 AM - 10:45 AM

Chair: **Gina McCarthy/DC/USEPA/US**

Sent By: **Cindy Huang/DC/USEPA/US**

Location: Ariel Rios North room 5415 Rooms: ARN-OAR-Room-5415/DC-ARN-OAR@EPA
Ave., NW, Washington, D.C.
20460 / video + Conference:
(b)(6)

Required:	bessette@cibo.org, Ellen Kurlansky/DC/USEPA/US@EPA, Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, Kevin Culligan/DC/USEPA/US@EPA, Lorie Schmidt/DC/USEPA/US@EPA, Peter Tsirigotis/RTP/USEPA/US@EPA, RobertJ Wayland/RTP/USEPA/US@EPA, Steve Page/RTP/USEPA/US@EPA
Optional:	Cynthia Browne/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Emily Atkinson/DC/USEPA/US@EPA, Janet Means-Thomas/DC/USEPA/US@EPA, Kirsten King/DC/USEPA/US@EPA, Lala Alston/RTP/USEPA/US@EPA, Mary Resendez/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Peter South/RTP/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA

Description

We realize the decision process at EPA regarding finalization of the Boiler MACT Reconsideration will happen well above the technical developmental level within EPA. We also realize an understanding of the technical implications of this rule are critical for producing a rule that will effectively promote environmental benefit, be truly achievable and minimize job loss in these uncertain times. As such, I would like to request a ½ to 1 hour meeting with you and 5 or 6 of our technical folks on Friday morning April 27th to review some of the technical considerations and to discuss possible policy implications and interrelationships between Boiler MACT and Utility MACT achievability and to consider potential alternative policy considerations.

By copy to Gina McCarthy, I am sure the technical information has been presented to RTP Technical Staff by so many people, so many times that to do so again would be an undue burden on them considering an expected publication date of late spring 2012. However, it might be worthwhile for someone from your staff to sit in on the meeting if that is desirable. If between now and then, your staff needs anything from CIBO, we would be happy to provide whatever we can.

Hopefully a meeting on the 27th can work out. If not we can try to find another day that could work.

Bob Bessette

Robert D. Bessette
President
Council of Industrial Boiler Owners
6801 Kennedy Road Suite 102
Warrenton, Virginia 20187

Telephone: 540-349-9043
Mobile: 703-231-5496

E-mail: bessette@cibo.org
Website: <http://www.cibo.org>

Personal Notes

----- Forwarded by Amit Srivastava/DC/USEPA/US on 11/02/2012 04:58 PM -----

Meeting with Steven Gossett, Eastman Chemical Company

Tue 05/01/2012 10:30 AM - 11:15 AM

Chair: **Gina McCarthy/DC/USEPA/US**
Sent By: **Cindy Huang/DC/USEPA/US**
Location: Ariel Rios North room 5400, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 / video + conference: (b)(6) 8 access (b)(6)

Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, Lorie

Required:	Schmidt/DC/USEPA/US@EPA, Peter Tsirigotis/RTP/USEPA/US@EPA, srgosset@eastman.com, Steve Page/RTP/USEPA/US@EPA
Optional:	Cynthia Browne/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Emily Atkinson/DC/USEPA/US@EPA, Kirsten King/DC/USEPA/US@EPA, Lala Alston/RTP/USEPA/US@EPA, Maria Sanders/RTP/USEPA/US@EPA, Mary Resendez/DC/USEPA/US@EPA, Sharon Cooperstein/DC/USEPA/US@EPA, Tanya Johnson/RTP/USEPA/US@EPA

Description

From Eastman:
Steve Gossett
Fred Cleveland

From: Gossett, Stephen R
Sent: Friday, April 20, 2012 10:47 AM
To: 'Mcarthy.gina@epa.gov'; 'Mccabe.janet@epa.gov'
Subject: Thankyou and Request to Address a Related Issue

First of all, thanks for taking time to listen to the concerns yesterday regarding SO2 NAAQS modeling. I hope my case study was of interest. I very much enjoyed the meeting. (I found that you thought I said "make-up" plant to be most amusing!)

In our efforts to consider a conversion of a major portion of our energy consumption from coal to natural gas, Eastman has identified the emissions averaging provisions of the upcoming Boiler MACT as a critical issue. The current proposal would not allow a fully converted boiler to be used in an emissions average with another coal boiler at a given facility. Conversely, the proposal would allow a controlled coal boiler or a coal boiler converted to 89% gas to be averaged. Also, the proposal would not allow a stoker boiler to be averaged with a pulverized coal boiler for particulate matter. Both of these issues present major roadblocks to a decision to switch to natural gas, an outcome that would undoubtedly result in much better environmental footprint than adding HAP controls to coal boilers.

We were successful in getting EPA to solicit comment on this issue in the December 2011 proposal and very much appreciated the opportunity to comment.

However, I am hearing that there remain policy concerns with the issue. I feel sure these can be overcome and am seeking an opportunity to address these.

I have requested a meeting with Mr. Goo, whom I have heard is assigned to the issue, but, so far, have not gotten a response.

I will note this issue may be touched on in the upcoming meeting with CIBO on May 4th, but, whereas Eastman initiated this issue, we would gladly travel to EPA HQ for a personal discussion of the issue.

Thank you both very much for the consideration.

Steve Gossett
Eastman Chemical Company

EPA-487

Document Body

	 Meeting/Appointment
Date	05/31/2012
Time	04:00:00 PM to 04:45:00 PM
Chair	Bob Perciasepe
Location	3412 Ariel Rios North Call In #(b)(6)
	 Invitees
Required	Arvin Ganesan; Avi Garbow; Barbara Bennett; Dennis McLerran; Gina McCarthy; Janet McCabe; Ken Kopocis
Optional	
FYI	Cindy Huang; Crystal Penman; Ed Walsh; Elena Richardson; Martha Workman; Matthew Magorrian; Monee Gardner; Rhonda Robinson

Here are the issues that will likely be discussed tomorrow with Murkowski's staff.

----- Forwarded by Arvin Ganesan/DC/USEPA/US on 05/30/2012 02:25 PM -----

From: "Campbell, McKie (Energy)" <McKie_Campbell@energy.senate.gov>
To: Arvin Ganesan/DC/USEPA/US@EPA
Cc: "McCormick, Patrick (Energy)" <Patrick_McCormick@energy.senate.gov>
Date: 05/30/2012 02:19 PM
Subject: FW: Agenda

Arvin –

Attached is a proposed agenda. We do not expect to resolve all these issues, but hope to identify appropriate legislative and EPA staff to work on each and report back.

McKie

McKie Campbell
Senate Energy and Natural Resources Committee
202-224-5305
McKie_Campbell@energy.senate.gov



Proposed Agenda May 31, 2012.docx

----- Original Message -----

From: Ed Walsh
Sent: 05/23/2012 02:24 PM EDT
To: Teri Porterfield
Subject: Re: Here's Bob calendar for next week. Hope this will help...

Teri. Are there two or three times that we can offer....I am not sure how to prioritize his available times.
Thanks

Ed

----- Original Message -----

From: Teri Porterfield
Sent: 05/23/2012 01:06 PM EDT
To: Ed Walsh
Cc: Denise Anderson; Nena Shaw
Subject: Here's Bob calendar for next week. Hope this will help...

Hi Nena and Teri

Can you please help with this request. Basically I need to get Bob to meet with Sen. Murkowski's staff sometime next week if possible

Thanks

Ed

Ed Walsh
Appropriations Liaison
Office of the Chief Financial Officer
U.S. EPA
202-564-4594

----- Forwarded by Ed Walsh/DC/USEPA/US on 05/23/2012 11:52 AM -----

From: Arvin Ganesan/DC/USEPA/US
To: Ed Walsh/DC/USEPA/US@EPA
Date: 05/22/2012 10:19 AM
Subject: Fw: EPA hearing followup on discussion between Administrator Jackson and Senator Murkowski

As follow up to the Senate hearing.

Ed, would you mind working with Leif to find a time to do this? Let's try to do it around Bob's schedule.
Can you work with Teri?

The roster of invitees should include:

me
Bob P
you
Janet McCabe
Ken Kopocis
Avi Garbow
Dennis McClaren (phone)

----- Forwarded by Arvin Ganesan/DC/USEPA/US on 05/22/2012 10:17 AM -----

From: "Fonnesbeck, Leif (Appropriations)" <Leif_Fonnesbeck@appro.senate.gov>
To: Arvin Ganesan/DC/USEPA/US@EPA
Date: 05/17/2012 10:22 AM
Subject: FW: EPA hearing followup on discussion between Administrator Jackson and Senator Murkowski

Arvin, if it's possible my guys would really like Perciasepe there if possible and we'd be happy to come down to your offices. But if his schedule is too much of a nightmare we don't want to delay the meeting on that account. Again, many thanks for your help.

-----Original Message-----

From: Fonnesbeck, Leif (Appropriations)
Sent: Thursday, May 17, 2012 12:39 AM
To: 'Ganesan.Arvin@epamail.epa.gov'
Subject: Re: EPA hearing followup on discussion between Administrator Jackson and Senator Murkowski

Yes. Fine with your proposed roster. Many thx for helping set this up.

From: Arvin Ganesan [mailto:Ganesan.Arvin@epamail.epa.gov]
Sent: Wednesday, May 16, 2012 08:34 PM
To: Fonnesbeck, Leif (Appropriations)
Subject: Re: EPA hearing followup on discussion between Administrator Jackson and Senator Murkowski

Hi Leif,
Hope all is well. Yes, we are planning on this meeting. I'd suggest some slightly different personnel to make this meeting a little more productive. I'd suggest that the Agency send a different representative from the office of water, probably Ken Kopocis. Also, in order to schedule this meeting in the next couple of weeks, I'd suggest that we drop Perciasepe from the roster. Aside from that, I think this looks good.

Are you comfortable with the modified roster? If so, I'll ask someone on my staff to coordinate dates and give you and McKie some times.

-----"Fonnesbeck, Leif (Appropriations)" <Leif_Fonnesbeck@appro.senate.gov> wrote: -----
To: Arvin Ganesan/DC/USEPA/US@EPA
From: "Fonnesbeck, Leif (Appropriations)" <Leif_Fonnesbeck@appro.senate.gov>
Date: 05/16/2012 04:50PM
Subject: EPA hearing followup on discussion between Administrator Jackson and Senator Murkowski

Arvin, I hope this note finds you well. It's been a while since we've talked. At our budget hearing today Senator Murkowski asked Administrator Jackson if she could have her senior operational staff meet with the Senator's staff in the next few weeks to go over some key issues (primarily AK related) and try to see if there is an acceptable path forward for both parties. The Administrator agreed that this would be worthwhile. Although, the scheduling may be a bit difficult, we were hoping we could get Mike Shapiro, Deputy Ass't Administrator for Water (and if he's unavailable either Nancy Stoner or Ken Kopocis), Bob Perchiacepe (Dep Administrator) and Janet McCabe (Air Deputy), Joel Beauvais or some other representative from OGC and finally the Region 10 Administrator who could call in by phone if need be. They'd be meeting with McKie Campbell and other senior staff on the ENR committee to review current issues with an emphasis on Alaska.

Proposed Agenda

May 31, 2012

- I. Introductions/Objectives
- II. Issues for Discussion
 - a. Recognition of Progress
 - i. NESHAP Rice Regulations for Power Production
 - ii. Aviation Fuel Regulations
 - b. Issues of Significant On-going Concern
 - i. Cruiseship and Freight Carrier Emission Concerns
 - ii. "Boiler MACT" Concerns, *e.g.*, Alyeska TAPS impacts
 - iii. Bristol Bay Watershed Assessment
 - iv. Drinking Water Regulation – Alaska-wide
 - v. Vessel Discharge Regulations
 - vi. Power Plan Air Quality Regulation, *e.g.*, Healy Plant
 - vii. Particulate Matter Regulation, *e.g.*, Fairbanks 2.5
 - viii. Air Regulations - Incinerator Rules
 - ix. Juneau Runway Ice Melt
 - x. Mat-Su Amonia Waste Water Treatment
 - xi. EPA Wetland Enforcement
 - xii. CERCLA Section 108 (b)
- III. Next Steps

EXHIBIT D

EPA-287

Richard Windsor/DC/USEPA/US

01/24/2012 11:36 AM

To Ken Kopocis

cc

bcc

Subject Fw: Daily Reading File: January 19, 2012

See the letter from the WSSC in light of the mtg we attended recently. Lisa

----- Forwarded by Richard Windsor/DC/USEPA/US on 01/24/2012 11:35 AM -----

From: EPAExecSec
To: Aaron Dickerson/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Bicky Corman/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Eric Wachter/DC/USEPA/US@EPA, Gladys Stroman/DC/USEPA/US, Heidi Ellis/DC/USEPA/US@EPA, Jose Lozano/DC/USEPA/US@EPA, Laura Vaught/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Sarah Pallone/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA, Stephanie Washington/DC/USEPA/US@EPA, Christopher Busch/DC/USEPA/US@EPA, Veronica Burley/DC/USEPA/US@EPA, Elizabeth Ashwell/DC/USEPA/US@EPA, Brendan Gilfillan/DC/USEPA/US@EPA, briefings@EPA
Date: 01/19/2012 04:12 PM
Subject: Daily Reading File: January 19, 2012
Sent by: Eliska Postell



Daily Reading File.1.19.12.pdf

**Correspondence Management System****Control Number: AX-12-000-0850****Printing Date: January 19, 2012 09:44:21****Citizen Information****Citizen/Originator:** Staples, Todd

Organization: Texas Department of Agriculture
Address: Post Office Box 12847, Austin, TX 78711

Constituent: N/A**Committee:** N/A**Sub-Committee:** N/A**Control Information**

Control Number: AX-12-000-0850 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Feb 3, 2012 **# of Extensions:** 0
Letter Date: Jan 12, 2012 **Received Date:** Jan 19, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Subject: Daily Reading File - Comment on the proposed National Pollutant Discharge Elimination System Concentrated Animal Feeding Operations Reporting Rule
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Lawrence Elworth - AO-IO
OCIR - Office of Congressional and Intergovernmental Relations
OEAE - Office of External Affairs and Environmental Education
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
R6 - Region 6 -- Immediate Office

Lead Information**Lead Author:** N/A**Lead Assignments:**

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OW	Jan 19, 2012	Feb 3, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information**Supporting Author:** N/A**Supporting Assignments:**

Assigner	Office	Assignee	Assigned Date
No Record Found.			

TEXAS DEPARTMENT OF AGRICULTURE

TODD STAPLES
COMMISSIONER

January 12, 2012

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

RECEIVED
2012 JAN 18 PM 1:09
OFFICE OF THE
EXECUTIVE SECRETARY

Dear Administrator Jackson:

Thank you for the opportunity to comment on the proposed National Pollutant Discharge Elimination System (NPDES) concentrated animal feeding operations (CAFO) reporting rule, which would unnecessarily extend EPA's regulatory power at the expense of our nation's domestic food producers.

First, the proposed rules and the rulemaking process are fundamentally flawed. The Clean Water Act (CWA) rightfully provides EPA the authority to regulate harmful and controllable pollution discharges to protect our nation's waterways. In the proposed rule, EPA is clearly extending its regulatory authority beyond the intent of the CWA, instituting a structure that focuses on regulating facilities because they may meet a broad administrative definition, not because they operate in a manner that poses a danger to human health or the environment.

Section 308(a) of the CWA states "the Administrator shall require the owner or operator of any *point source* to" provide information to EPA. Section 308 *does not* call for reporting by sources that do not discharge into waterways. Being defined as a CAFO does not automatically mean an operation is a source of pollution, and the federal courts have repeatedly and consistently ruled that EPA does not have authority over facilities that do not actually discharge into waters of the United States. Furthermore, your agency's current rules already require that an owner or operator of a CAFO that actually discharges into streams, lakes and other waters must apply for a NPDES permit under the CWA.

As recently as March 2011, the United States Court of Appeals for the Fifth Circuit affirmed in *National Pork Producers Council, et al v. EPA* that the agency does not have authority over CAFOs where no discharge occurs. Additionally, over the past few years, members of Congress have proposed extending regulatory authority to EPA; however, these efforts have failed, further proving the lack of desire or need to extend this regulatory power to EPA.



The Honorable Lisa Jackson
January 12, 2012
Page 2

Even if EPA were acting within its legal authority by regulating non-polluting CAFOs, the two proposed reporting options under which the operations would be required to submit information to the agency are unnecessarily burdensome. Under the first option, individual CAFOs would be required to report to EPA, unless states with authorized NPDES programs choose to provide the information. Where a state provides all the information to EPA, individual CAFOs would not be required to submit information. The Texas Commission on Environmental Quality (TCEQ) has delegated NPDES authority and may make the information available to EPA. TDA recommends EPA, when acting within its authority, gather necessary reports through state regulatory agencies rather than burdening individual entities with unnecessary costs and duplicative reporting rules.

Under the second reporting option, only CAFOs in EPA designated focus watersheds that have water quality concerns associated with feeding operations would be required to report the requested information to EPA. Proposed EPA criteria for identifying focus watersheds include "high priority watersheds, patterns of vulnerable soils, high densities of animals, and other relevant information such as proximity to environmental justice communities."

My concern with this option is that it enables EPA to make a unilateral decision in classifying focus watersheds. The agency would not have to consult with either state NPDES regulatory officials, river authorities or affected stakeholders prior to designation. Again, the fundamental issue that EPA does not have the regulatory authority to require non-discharging CAFOs to report additional information is clear and compounded by this second option, which could be used to eliminate external and stakeholder input.

I appreciate the opportunity to share my concerns about this rule with you. It is imperative EPA curb efforts to unilaterally expand its regulatory authority. To continue this rulemaking would demonstrate a clear disregard for sound science, the public's will and established law; it will lead to costly regulation and, at best, obscure benefits.

Sincerely yours,



Todd Staples

TS/RE/re

29 non-resonsive pages have been removed from this file

EPA-379

EPAExecSec

Sent by: Eliska Postell

03/29/2012 04:07 PM

To Aaron Dickerson, Arvin Ganesan, Bicky Corman, Bob Perciasepe, Bob Sussman, Diane Thompson, Eric Wachter, Gladys Stroman, Heidi Ellis, Jose Lozano, Laura Vaught, Michael Goo, Sarah Pallone, Richard Windsor, Stephanie Washington, Christopher Busch, Veronica Burley, Elizabeth Ashwell, Brendan Gilfillan, briefings

cc

bcc

Subject Daily Reading File: March 29, 2012



Daily Reading File.3.29.12.pdf

**Correspondence Management System****Control Number: AX-12-000-5834****Printing Date: March 29, 2012 02:27:11****Citizen Information****Citizen/Originator:** Stake, Ron

Organization: Ohio Small Business Association
Address: P.O. Box 110, Blacklick, OH 43004

Constituent: N/A**Committee:** N/A**Sub-Committee:** N/A**Control Information**

Control Number: AX-12-000-5834 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 12, 2012 **# of Extensions:** 0
Letter Date: Mar 23, 2012 **Received Date:** Mar 28, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Subject: Daily Reading File- EPA prohibition of using second generation anticoagulant rodenticides in and around homes and small businesses
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OCSPP - OCSPP - Immediate Office
OEAE - Office of External Affairs and Environmental Education
OP - Office of Policy
OSBP - Office of Small Business Programs
R5 - Region 5 -- Immediate Office

Lead Information**Lead Author:** N/A**Lead Assignments:**

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OSBP	Mar 29, 2012	Apr 12, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information**Supporting Author:** N/A**Supporting Assignments:**

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



OFFICE OF THE
EXECUTIVE SECRETARIAT

2012 MAR 28 AM 11:14

RE

Ohio Small Business Association . PO Box 110 . Blacklick . OH . 43004

Lisa Jackson
Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Jackson,

Over the years the Environmental Protection Agency (EPA) and its measures have had a major impact on our economy and especially small businesses. Recently, another senseless measure has come about that will do little to protect the environment and Americans and will result in more harm to small businesses. The measure I'm referring to is an effort by the EPA to prohibit consumers from using second generation anticoagulant rodenticides in and around their own homes and small businesses.

Every day small businesses must control and oversee all aspects of their operations, from payroll to customer service to maintenance. That maintenance includes pest control. Having the most modern and effective rodenticides on the market allows for cost-effective measures to control pests and prevent disease or possible health code violations.

The fact of the matter is that no one has been seriously harmed or injured by the proper use of these rodenticides but for some unknown reason the EPA seems bent on removing them from the marketplace and making it harder for small businesses to stay afloat. In reality, removing these cost-effective means of controlling rodents will result in a threat to public health by spreading disease, causing widespread economic damage, including contaminating food and destroying property.

As the executive director for the Ohio Small Business Association I feel it's important that I speak out on behalf of all small businesses who will likely suffer from this measure. On many occasions more regulation causes more harm than good and it does so in this case. I ask that you reconsider this measure and think about the impact it will have not only on small businesses, but the environment and the potential health risks an uncontrolled rodent population may create.

Sincerely,

Ron Stake, Executive Director
Ohio Small Business Association

17 non-responsive pages have been removed from this file

EPA-381

EPAExecSec

Sent by: Eliska Postell

03/30/2012 04:12 PM

To Aaron Dickerson, Arvin Ganesan, Bicky Corman, Bob Perciasepe, Bob Sussman, Diane Thompson, Eric Wachter, Gladys Stroman, Heidi Ellis, Jose Lozano, Laura Vaught, Michael Goo, Sarah Pallone, Richard Windsor, Stephanie Washington, Christopher Busch, Veronica Burley, Elizabeth Ashwell, Brendan Gilfillan, briefings

cc

bcc

Subject Daily Reading File: March 30, 2012



Daily Reading File.3.30.12.pdf



Correspondence Management System

Control Number: AX-12-000-5933

Printing Date: March 30, 2012 01:03:54



Citizen Information

Citizen/Originator: Sullivan, Lynne

Organization: Indiana Apartment Association
Address: 9100 Keystone Crossing, Indianapolis, IN 46240

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-12-000-5933 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 13, 2012 **# of Extensions:** 0
Letter Date: Mar 29, 2012 **Received Date:** Mar 29, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Daily Reading File - Proposed Rodenticide Ban
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OEAE - Office of External Affairs and Environmental Education
R5 - Region 5 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OCSPP	Mar 30, 2012	Apr 13, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					
(b) (6)	OCSPP	OCSPP-OPP	Mar 30, 2012	Apr 13, 2012	N/A
Instruction: REspond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



9100 Keystone Crossing, Suite 725
Indianapolis, Indiana 46240
317-816-8900 FAX 317-816-8911
www.iaaonline.net

March 23, 2012

The Honorable Lisa Jackson
Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Jackson:

The Indiana Apartment Association (IAA) represents the owners and managers of more than 200,000 multifamily residential housing units across our state. On behalf of IAA, I want to express our deep concern about your agency's proposed cancellation of the sale of second generation rodenticides for residential consumer uses.

Left unchecked, rodent infestations can present serious potential public health issues, particularly in buildings with multiple adjacent dwellings. We have seen in the past several years how the lack of an effective and affordable means for controlling bed bug infestations has led to significant new infestations of bed bugs across the country.

Our association exists to promote healthy, safe, and affordable environments for over one-third of Hoosiers who choose, for a variety of reasons, to seek apartment living for themselves and their families. Our members adhere to local, state and federal laws to keep our residents safe. Many of our members are certified in apartment maintenance and management through classes offered by IAA and certified through the National Apartment Association.

I am not aware of documented cases of anyone of any age in Indiana suffering systems of anticoagulant toxicity due to accidental and unintentional exposures to second generation rodenticides. The Indiana experience is supported by the 2007 study in the journal *Clinical Toxicology* that reviewed 20 years of data on reports of rodenticide exposures.

While we pride ourselves on providing a safe living environment, we also strive to maintain the affordability of our properties. A policy such as the one you propose would force our members to hire professional exterminators, or to suffer the damage that can be caused by rodents running unchecked. The result would be greater costs, passed on to our residents, and greater public health risks in the form of the dozens of diseases known to be carried by rodents.

Our members respectfully ask you to reconsider your draft policy on canceling consumer use of second generation rodenticides, and to allow the marketplace and product purchasers to decide which rodenticides are most appropriate for the multifamily residential environment.

Sincerely,



Lynne Sullivan, CAE
President
Indiana Apartment Association

cc: Congressman Dan Burton
Congressman Larry Bucshon
Congressman Andre Carson
Senator Dan Coats
Congressman Joe Donnelly
Honorable Jim Jones
Senator Richard Lugar
Congressman Mike Pence
Congressman Todd Rokita
Congressman Marlin Stutzman
Congressman Pete Visclosky



Correspondence Management System

Control Number: AX-12-000-5935

Printing Date: March 30, 2012 01:07:01



Citizen Information

Citizen/Originator: Taylor, Bob

Organization: Do it Best Corporation

Address: 6502 Nelson Road, Fort Wayne, IN 46803

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-5935 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 13, 2012 **# of Extensions:** 0
Letter Date: Mar 29, 2012 **Received Date:** Mar 29, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Daily Reading File - Concerns over Rodenticides
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OCHP - Office of Children's Health Protection
OEAE - Office of External Affairs and Environmental Education
R5 - Region 5 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OCSP	Mar 30, 2012	Apr 13, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					
(b) (6)	OCSP	OCSP-OPP	Mar 30, 2012	Apr 13, 2012	N/A
Instruction: Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

Do it Best Corp.

Products
Services
Solutions

Lisa Jackson
Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

P.O. Box 868
Fort Wayne, IN
46801-0868
Ph: 260-748-5300
Fax: 260-493-1245
mail@doitbest.com

Administrator Jackson:

Do it Best Corp. is a member-owned cooperative of close to 4000 retail hardware, lumber and building material dealers across the country. The independent member-owners of our corporation strive each day to provide their customers with the solutions they need for everyday home improvement problems, including rodent control. Our members have safely sold and advised customers on the proper use of rodenticides since our company's founding nearly 70 years ago. Unfortunately, your agency is now planning to outlaw the sale of second generation rodenticides to consumers, including those used for control of common house mice and rats, sold under brand names like d-Con.

This action seems to be a solution looking for a problem. Available literature on the agency's proposed action suggests you fear a public health problem. On the contrary, recent scientific studies, for example one published in the journal Clinical Toxicology, conclusively show that in the 20 years studied, there have been no recorded instances of any significant human adverse health effects due to accidental exposure to these rodenticides. Alternately, the incidences of rodent bites, particularly among children, are well documented.

If consumers do not have ready access to effective rodent control products, your policy could actually work to the detriment of public health by exposing humans to the resulting increase in the rodent population and the dozens of diseases which they can transmit to humans. Additionally, your proposal will effectively increase costs for rodent control by forcing our retail customers to hire professional exterminators if they want to treat an infestation with the very same ingredients you want to forbid consumers from using themselves. Those who cannot afford a professional exterminator will likely abandon their rodent control efforts, or choose less effective alternatives, further increasing the rodent population.

At Do it Best Corp., our member-owners believe in safe, common sense solutions to everyday problems. We respectfully suggest your agency has over reached in their protective efforts here, and could cause more harm than good. We hope you will reconsider your proposed action on rodenticides, and continue to allow access for our member-owners and their customers to modern, safe, effective rodenticides.

Sincerely,



Bob Taylor
President & CEO

cc: Senator Dan Coats
Honorable Jim Jones
Senator Richard Lugar
Congressman Marlin Stutzman

4 non-responsive pages have been removed from this file

EPA-378

EPAExecSec

Sent by: Eliska Postell

03/28/2012 04:05 PM

To Aaron Dickerson, Arvin Ganesan, Bicky Corman, Bob Perciasepe, Bob Sussman, Diane Thompson, Eric Wachter, Gladys Stroman, Heidi Ellis, Jose Lozano, Laura Vaught, Michael Goo, Sarah Pallone, Richard Windsor, Stephanie Washington, Christopher Busch, Veronica Burley, Elizabeth Ashwell, Brendan Gilfillan, briefings

cc

bcc

Subject Daily Reading File: March 28, 2012



Daily Reading File.3.28.12.pdf



Correspondence Management System

Control Number: AX-12-000-5716

Printing Date: March 28, 2012 03:47:02



Citizen Information

Citizen/Originator: Speedy, Mike

Organization: State of Indiana

Address: 200 West Washington Street, Indianapolis, IN 46204

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-5716 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 11, 2012 **# of Extensions:** 0
Letter Date: Mar 20, 2012 **Received Date:** Mar 27, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Daily Reading File-Concern over proposed "cancellation of sale" of consumer use low-cost and effective modern "second-generation" rodenticides
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: (b) (6) - OCSPP-OPP-PRD
OCIR - Office of Congressional and Intergovernmental Relations
OEAAE - Office of External Affairs and Environmental Education
R5 - Region 5 -- Immediate Office
Richard Keigwin - OCSPP-OPP-PRD

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OCSPP	Mar 28, 2012	Apr 11, 2012	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				
	OCSPP	OCSPP-OPP	Mar 28, 2012	Apr 11, 2012	N/A
	Instruction: direct reply--Respond directly to this citizen's questions, statements, or concerns				
	OCSPP-OPP	OCSPP-OPP-FEAD-CSB	Mar 28, 2012	Apr 11, 2012	N/A
	Instruction: N/A				



STATE OF INDIANA
HOUSE OF REPRESENTATIVES

THIRD FLOOR STATE HOUSE

INDIANAPOLIS, INDIANA 46204

State Representative Mike Speedy

200 W. Washington St.

Indianapolis, IN 46204

website: www.in.gov/h90

e-mail: h90@in.gov

COMMITTEES:

Employment, Labor & Pensions

Financial Institutions

Roads and Transportation, Vice Chairman

March 20, 2012

The Honorable Lisa Jackson
Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

EXECUTIVE SECRETARIAT

OFFICE OF THE

2012 MAR 27 AM 10:40

RECEIVED

Administrator Jackson,

I am writing you today wearing two hats. I am Owner of American Village Properties, owner and developer of multi-unit residential complexes in Indiana and Kentucky. I also serve the citizens of Indiana as a State Representative (Dist. 90).

As a developer/apartment owner, I am concerned that your proposed "cancellation of sale" of consumer use low-cost and effective modern "second-generation" rodenticides will drive up our operating costs, and eventually my residents' rents. As a State Representative, I am concerned about the larger public health issue of your choice to ban second generation rodenticides, absent any evidence of public harm or threat of harm, while apparently accepting the inevitable rise in rodent populations. As you are well aware, rodents are known to carry dozens of contagious diseases.

We all want our neighbors to be safe and healthy, and are not willing to sacrifice health for convenience, or even reasonable costs. However the balance you are claiming to strike is really no balance at all. Rather, it is lopsided regulation that ignores scientific studies, and adds costs without any demonstrable or projected public benefit.

I must respectfully ask you to reconsider your proposed action on these consumer-use rodenticides, and allow the scientific, public health, and residential real estate communities to work for the best for their customers and constituents, without arbitrary interference.

Sincerely,

Mike Speedy
State Representative
District 90

23 non-responsive pages were removed from this file

EPA-371

EPAExecSec

Sent by: Eliska Postell

03/27/2012 03:51 PM

To Aaron Dickerson, Arvin Ganesan, Bicky Corman, Bob Perciasepe, Bob Sussman, Diane Thompson, Eric Wachter, Gladys Stroman, Heidi Ellis, Jose Lozano, Laura Vaught, Michael Goo, Sarah Pallone, Richard Windsor, Stephanie Washington, Christopher Busch, Veronica Burley, Elizabeth Ashwell, Brendan Gilfillan, briefings

cc

bcc

Subject Daily Reading File: March 27, 2012



Daily Reading File.3.27.12.pdf



Correspondence Management System

Control Number: AX-12-000-5613

Printing Date: March 27, 2012 03:10:22



Citizen Information

Citizen/Originator: Kelman, Gary F.

Organization: Academy of Board Certified Environmental Professionals

Address: PO Box 42564, Towson, MD 21284-2564

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-5613
Status: Pending
Due Date: Apr 11, 2012
Letter Date: Mar 20, 2012
Addressee: AD-Administrator
Contact Type: LTR (Letter)
Signature: DX-Direct Reply
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Subject: Daily Reading File - Certified Environmental Professional Scientific Integrity Policy - Professional Credentials
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OEAE - Office of External Affairs and Environmental Education

Alternate Number: N/A
Closed Date: N/A
of Extensions: 0
Received Date: Mar 27, 2012
Addressee Org: EPA
Priority Code: Normal
Signature Date: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OARM	Mar 27, 2012	Apr 11, 2012	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				

Supporting Information

Supporting Author: N/A

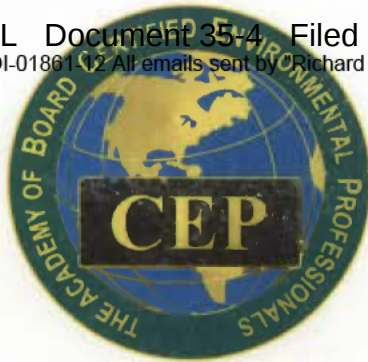
Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
(b) (6)	OEX	Assign OARM as lead office	Mar 27, 2012

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Environmental Professionals, Inc.**



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Professional since 1979

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Executive Administrator:
Nadine Jackson-Bey
Towson, MD

ABCEP is a 501(c)6
non-profit organization.
EIN: 52-2196458

March 20, 2012

Ms. Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington DC 20460
202.564.4700
202.272.0167

Sent by U.S. Mail and E-mail to jackson.lisap@epa.gov

**Subject: Certified Environmental Professional
Scientific Integrity Policy – Professional Credentials**

Dear Administrator Jackson,

We are writing to you today seeking your direction and instruction as to the most appropriate Points-of-Contact (POC) within EPA Headquarters and Regional Offices with whom to open discussions about having the Certified Environmental Professional identified as a career development opportunity and resource. Our request is made in light of the U.S. Office of Personnel Management's Memorandum for Chief Human Resources Officers "Fact Sheet on Certification and Certificate Programs" that indicates Agencies may look to established professional organizations for professional certification of its employees.¹

In review of EPA's website the following two human resources-led programs are in-place for recognition of professional development; however, these programs focus upon early and late career stages leaving a void for the mid-level and early-senior level scientist.

- Environmental Careers Program (ECP) offers training and professional development for entry-level positions.²
- Senior Environmental Employment program (SEE) provides a forum for individuals 55-years old and older to contribute to EPA missions and specifically recognizes experienced scientists.

¹ <http://www.chcoc.gov/Transmittals/Attachments/trans1489.pdf>

² <http://www.epa.gov/ohr/ecp.html>

Ms. Lisa Jackson
Environmental Protection Agency
Page Two

The EPA's Scientific Integrity Policy includes professional development of government scientists with specific attention to encouraging active contribution to professional organizations and maintaining professional credentials.³

We take this opportunity to request instruction as to the appropriate Point-of-Contact (POC) to further discuss including the Certified Environmental Professional as a career development opportunity to mid-career professionals. This opportunity would provide Careerists with an established, recognized professional certification in line with the Scientific Integrity Policy's underlying presumption that individuals have applied, obtained, and maintained his/her professional credential.

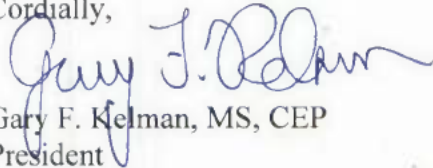
The Academy of Board Certified Environmental Professionals (ABCEP) began credentialing environmental professionals in 1979 and is accredited by the Council of Engineering and Scientific Specialty Boards (CESB)⁴. ABCEP is a not-for-profit scientific specialty board. ABCEP issues the Certified Environmental Professional (CEP) and the CEP-In Training credential. The CEP is recognized by the U.S. Department of Labor. The CEP is recognized by national environmental and engineering companies as a credential necessary for promotion and career advancement, by environmental insurance underwriters as a credential assuring competency, and by several Federal Agencies for personnel promotion and competency of studies/documents issued by a CEP.

The CEP is bestowed upon individuals who have attained nine (9) years of professional experience, submit five (5) written essays that are peer-reviewed by a multi-member review panel, submit eight (8) letters of reference, and proves him / herself in an oral interview. The time-consuming CEP credentialing process has been recognized for differentiating itself from other credentialing processes through these comprehensive personal requirements, peer-review essay exam, and oral interviews versus credentials bestowed upon an individual who regurgitated facts in a single exam.

On behalf of our credentialed professionals, several of whom are existing EPA careerists and contractors, and future applicants who may be EPA personnel or contractors, we invite the opportunity to discuss with you, or your designee, what efforts can be done to add the CEP as a recognized professional development credential.

Please contact either myself at the contact information below or Corry Platt, CEP, [ABCEP Recognition Committee Chair] at 919.362.3700 or corry.platt@concept2delivery.com

Cordially,



Gary F. Kelman, MS, CEP
President

Academy of Board Certified Environmental Professionals
410-537-4423

(b)(6)

³ http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf

⁴ www.cesb.org

11 non-responsive pages were removed from this file

EPA-319

EPAExecSec

Sent by: Eliska Postell

03/06/2012 04:48 PM

To Aaron Dickerson, Arvin Ganesan, Bicky Corman, Bob Perciasepe, Bob Sussman, Diane Thompson, Eric Wachter, Gladys Stroman, Heidi Ellis, Jose Lozano, Laura Vaught, Michael Goo, Sarah Pallone, Richard Windsor, Stephanie Washington, Christopher Busch, Veronica Burley, Elizabeth Ashwell, Brendan Gilfillan, briefings

cc

bcc

Subject Daily Reading File: March 6, 2012



Daily Reading File.3.6.12.pdf



Correspondence Management System

Control Number: AX-12-000-4243

Printing Date: March 06, 2012 03:40:25



Citizen Information

Citizen/Originator: Sittig, Mike

Organization: Florida League of Cities
Address: 301 South Bronough Street, Tallassee, FL 32301

Spitzer, Kurt

Organization: Florida Stormwater Association
Address: Post Office Box 867, Tallahassee, FL 32302

Holley, Christopher L.

Organization: Florida Association of Counties
Address: P.O. Box 549, Tallahassee, FL 32302

Constituent: N/A

Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number: AX-12-000-4243 **Alternate Number:** 873101014341
Status: Pending **Closed Date:** N/A
Due Date: Mar 20, 2012 **# of Extensions:** 0
Letter Date: Mar 6, 2012 **Received Date:** Mar 5, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Daily Reading File-Florida Numeric Nutrient Criteria
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OCIR - Office of Congressional and Intergovernmental Relations
OEAE - Office of External Affairs and Environmental Education
R4 - Region 4 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OW	Mar 6, 2012	Mar 20, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					
(b) (6)	OW	OW-OST	Mar 6, 2012	Mar 20, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information



February 28, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RECEIVED
2012 MAR -5 PM 12:07
OFFICE OF THE
EXECUTIVE SECRETARY

Re: Florida Numeric Nutrient Criteria

Dear Administrator Jackson:

We are writing to you today to urge the Environmental Protection Agency (EPA) to promptly review and approve the Florida Department of Environmental Protection's (FDEP) regulations on numeric nutrient criteria in Florida as were recently submitted to your Agency.

The FDEP regulations were unanimously approved by the Florida Environmental Regulation Commission this past December. Thereafter, both houses of the Florida Legislature unanimously passed ratification legislation regarding the criteria and Governor Scott signed the ratification legislation into law on February 17, 2012.

With the addition of these nutrient criteria, the State of Florida and its local government partners have the most comprehensive system for nutrient control in the country. Local governments spend several hundred million dollars each year on water quality and flood control initiatives. Florida's Total Maximum Daily Load and Basin Management Action Plan programs, implemented since 1999, are demonstrably addressing nutrient concerns. Florida has 34% of all of the surface water quality data in the nation. FDEP has spent over \$10 million in the development of our numeric nutrient criteria and is not finished yet.

Much of FDEP's rule mirrors that which was promulgated by EPA. But it also includes additional biological metrics and provisions to detect adverse trends in nutrients in all waterbodies. We think that these additional conditions provide for greater assurance from a scientific point of view that a waterbody is (in fact) impaired and far greater certainty that the rule cannot be determined to be arbitrary. Such provisions help assure that scarce public funds will not be allocated to improving a waterbody that is not actually impaired.

Letter to The Honorable Lisa Jackson
February 28, 2012
Page 2

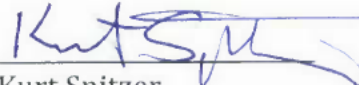
The Florida rules do not, at the present time, apply the numeric nutrient criteria to man-made waters or urban stormwater conveyances for both scientific and fiscal reasons. FDEP's narrative nutrient criteria will, for the time being, continue to apply to these types of waterbodies until an appropriate numeric criterion is developed. Of course, the downstream protection provisions of Florida's new nutrient standards will apply to these waterbodies in order to provide protection to the receiving waterbodies.

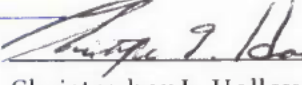
Applying numeric nutrient criteria to ditches or urban stormwater conveyances will inevitably result in the diversion of limited public funds away from those waters where a realistic opportunity exists for improvement of habitat and enhanced recreational uses, to those structures that are merely moving stormwater from one location to another. We believe that such a policy will inevitably result in a wasteful use of scarce public resources with highly uncertain benefits.

We believe that Florida's water quality improvement programs are the most comprehensive in the country. The State of Florida, its local governments and FDEP are best suited to develop a science-based rule that recognizes the great variations in Florida's aquatic systems.

We strongly encourage EPA to adopt FDEP's regulations as submitted, avoiding the promulgation or enforcement of additional regulations concerning numeric nutrient criteria for Florida's fresh waters.

Thank you for your consideration of our request.


Kurt Spitzer
Executive Director
Florida Stormwater
Association


Christopher L. Holley
Executive Director
Florida Association of
Counties


Mike Sittig
Executive Director
Florida League of Cities



Correspondence Management System

Control Number: AX-12-000-4319

Printing Date: March 06, 2012 04:35:44



Citizen Information

Citizen/Originator: Delvecchio, David M.

Organization: City of Lambertville

Address: 18 York Street, Lambertville, NJ 08530

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-4319 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 20, 2012 **# of Extensions:** 0
Letter Date: Feb 29, 2012 **Received Date:** Mar 6, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AD-Administrator **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Daily Reading File-Mercury and Air Toxics Standards for Power Plants
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: OCIR - Office of Congressional and Intergovernmental Relations
OEAE - Office of External Affairs and Environmental Education
R2 - Region 2 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OAR	Mar 6, 2012	Mar 20, 2012	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				
(b) (6)	OAR	OAR-OAQPS	Mar 6, 2012	Mar 15, 2012	N/A
	Instruction: OAR - Prepare response for the signature of Gina McCarthy, Assistant Administrator for the Office of Air and Radiation (OAR).				
(b) (6)	OAR-OAQPS	OAR-OAQPS-SPPD	Mar 6, 2012	Mar 14, 2012	N/A
	Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR				

Supporting Information

Supporting Author: N/A



City of Lambertville

18 York Street
Lambertville, NJ 08530

Phone: 609-397-0110

Fax: 609-397-2203

2012 MAR -6 AM 10:25

David M. DelVecchio
Mayor

Steven M. Stegman
Council President

OFFICE OF THE
EXECUTIVE SECRETARIAT

Beth Asaro
Councilwoman

Wardell Sanders
Councilman

Elaine Warner
Councilwoman

February 29, 2012

Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

As local elected officials representing big cities and small towns, we want to express our strong support for the Environmental Protection Agency's (EPA) recently issued Mercury and Air Toxics Standards for Power Plants (MATS). Mayors are on the front lines of protecting public health and this long overdue safeguard will reap tremendous benefits for our communities.

Mercury pollution, much of it coming from coal-fired power plants, represents a particularly widespread threat to families nationwide. According to your agency's own analysis, as of 2010, all 50 states have fish consumption advisories in place to warn residents of the potential health effects of eating fish caught from local waters. Of these advisories, 81% were issued in part because of mercury pollution accumulated within the aquatic food chain.

A dangerous neurotoxin, mercury poses a particular threat to pregnant women and small children. Exposure affects a developing child's ability to walk, talk, read, write and learn. The Center for Disease Control, along with your agency, estimate that as many as 1 in 6 women of childbearing age have high enough mercury levels in their blood to harm a developing fetus. Additionally, this rule will reduce exposure to a host of other health-threatening toxics, including arsenic, cyanide, chromium and acid gases.

EPA's own regulatory impact review of the rule predicts it will save citizens as much as \$90 billion annually when fully implemented through lower health care costs. Each year, this translates into as many as 11,000 lives saved, 4,700 heart attacks and 130,000 asthma attacks prevented, and 5,700 hospital visits avoided.

Clean, healthy air and water are fundamental American rights and we are eager to work with your agency to ensure these historic protections are quickly implemented.

Respectfully,

David M. DelVecchio, Mayor

Keep down a great job -

10 non-responsive pages were removed from this file

EPA-317

EPAExecSec

Sent by: Eliska Postell

03/02/2012 04:38 PM

To Aaron Dickerson, Arvin Ganesan, Bicky Corman, Bob Perciasepe, Bob Sussman, Diane Thompson, Eric Wachter, Gladys Stroman, Heidi Ellis, Jose Lozano, Laura Vaught, Michael Goo, Sarah Pallone, Richard Windsor, Stephanie Washington, Christopher Busch, Veronica Burley, Elizabeth Ashwell, Brendan Gilfillan, briefings

cc

bcc

Subject Daily Reading File: March 2, 2012



Daily Reading File.3.2.12.pdf



Correspondence Management System

Control Number: AX-12-000-4135

Printing Date: March 02, 2012 04:31:28



Citizen Information

Citizen/Originator: Brown, R. Steven

Organization: The Environmental Council of the States

Address: 50 F Street, NW, Washington, DC 20001

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-4135 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 16, 2012 **# of Extensions:** 0
Letter Date: Mar 2, 2012 **Received Date:** Mar 2, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: N/A **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Daily Reading File-Letter to urge EPA to contest the January 18, 2012 Submission of a 60-Day Notice of Intent to Sue
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: Please obtain concurrence from OGC on the response.
CC: OCIR - Office of Congressional and Intergovernmental Relations
OGC - Office of General Counsel -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OSWER	Mar 2, 2012	Mar 16, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

50 F Street, N.W.
Suite 350
Washington, D.C. 20001

Tel: (202) 266-4920
Fax: (202) 266-4937
Webpage: www.ecos.org

Thomas Burack
Commissioner, New Hampshire
Department of Environmental Services
PRESIDENT

Teresa Marks
Director, Arkansas Department of
Environmental Quality
VICE PRESIDENT

Dick Pedersen
Director, Oregon Department of
Environmental Quality
SECRETARY-TREASURER

Richard Oppen
Director, Montana Department of
Environmental Quality
PAST PRESIDENT

R. Steven Brown
Executive Director

March 2, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Ms. Jackson:

The purpose of this letter is to urge U.S. EPA to contest the January 18 submission of a 60-day Notice of Intent (NOI) to sue under RCRA's citizen suit provision over the agency's alleged non-discretionary duty to promulgate regulations for coal combustion residuals (CCR). The NOI seeks to impose an artificial judicial deadline for the promulgation of the final CCR rule. The Environmental Council of the States (ECOS) believes there is no basis for such a deadline, and is concerned that EPA consent to one would inappropriately cut short the agency's obligations under the Administrative Procedure Act (APA) to thoroughly review and respond to the thousands of comments from affected entities raising issues with elements of the CCR proposal.

Moreover, ECOS is concerned that acceding to the demands in the NOI would set a precedent that will jeopardize the thoughtful development of federal and state RCRA programs going forward. This could result in a burdensome cycle of never-ending RCRA rulemaking that would prove unworkable for EPA and the states while delaying the environmental improvements we are seeking to make. We elaborate on these points below.

EPA is Meeting its Obligations under RCRA Section 2002(b)

The NOI argues that EPA has a non-discretionary duty to promulgate the CCR regulations by a date certain based on RCRA section 2002(b), which provides that "[e]ach regulation promulgated under this chapter [RCRA] shall be reviewed and, where necessary, revised not less frequently than every three years." The NOI then makes broad assertions that EPA has reviewed its RCRA regulations for CCR and concluded that revisions to the CCR regulations are "necessary." Therefore, according to the NOI, EPA should be subject to a court-ordered deadline to issue final CCR rules.

As an initial matter, while EPA may have a duty under section 2002(b) to review the RCRA regulations every three years, the decision *whether* such revisions are necessary is left to the discretion of the agency. (See *EDF v. Thomas*, 870 F.2d 892, 899 [2nd Cir. 1990]; district court has jurisdiction under a comparable CAA regulatory review provision "to compel the Administration to perform purely ministerial acts, not to order the Administrator to make particular judgmental decisions.") Therefore, a court cannot direct EPA to promulgate a specific RCRA rule by a date certain because the decision of whether such revisions are "necessary" is left to the discretion of EPA.

More fundamentally, EPA already is meeting its obligations under section 2002(b) to review its regulations for CCRs; in fact, it has been consistently reviewing the rules for CCR every three years and therefore is fully in compliance with the statute. The NOI, however, makes the argument that section 2002(b) of RCRA requires EPA to have "completed" its review of the CCR regulations (and every other RCRA rule) and issue revised regulations, if necessary, during *every* three-year cycle. This assertion simply is not supported by the plain language of the statute.

A Premature Decision on the CCR Proposal is Inconsistent with the APA

ECOS maintains that the imposition on EPA of an artificial deadline to issue the final CCR rule would result in inappropriately cutting short the agency's obligations under the APA to thoroughly review and respond to the voluminous rulemaking record consisting of more than 450,000 comments. In reaching any final regulatory decision for CCR, it is incumbent on EPA to adhere to the APA, including giving due consideration to all "relevant" comments and responding to those comments with a "concise general statement of their basis and purpose." Any action to abbreviate this process through a settlement that suggests a preordained outcome to the rulemaking likely would violate the spirit, if not the letter, of the APA.

This is especially true in this rulemaking, where the comments of ECOS, other state associations, and state governments raised significant issues with *both* of the proposed regulatory options (Subtitle C or Subtitle D) for CCR, and instead argued that existing state CCR regulatory programs are adequately protective. Indeed, the State of Kentucky commented that EPA should issue a re-proposal without alternative proposed schemes to allow for more focused comments on a specific proposal. This option – of taking no regulatory action – is always available in any rulemaking and is an alternative that the agency must consider.

Conceding to the Allegations in the NOI Will Set an Ill-Advised Precedent

Finally, ECOS cautions EPA to give full consideration to the precedent that may be set by the settlement of the claims asserted in the NOI and the potential adverse implications on state governments. If EPA expressly or by implication concedes to the interpretation of RCRA section 2002(b) set forth in the NOI, the agency may be committing itself to formal reviews and revisions of each of its RCRA regulations (and, by extension, to state-authorized RCRA programs) on rapid-fire three-year cycles. Given the complexity and wide-ranging impacts of RCRA regulations on states, communities, and regulated entities, it would not be possible to complete full review and revision actions every three years. Such a requirement thus would undermine the stability and certainty of state-authorized RCRA programs. Putting aside the practical challenges of undertaking this endeavor (especially in states that require legislative approval for regulatory changes), it would be simply untenable in this time of shrinking state and federal budgets to allocate the resources necessary to engage in such an extensive and continuous regulatory review process.

For these reasons, ECOS urges EPA to contest the unfounded theories reflected in the NOI. We appreciate EPA's attention to this matter.

Regards,

A handwritten signature in black ink, appearing to read "R. Steven Brown". The signature is fluid and cursive, with the first name "R." and last name "Brown" clearly distinguishable.

R. Steven Brown
Executive Director



Correspondence Management System

Control Number: AX-12-000-4112

Printing Date: March 02, 2012 03:48:15



Address: 701 E Franklin Street, Richmond, VA 23219

Virginia Grain Producers Association

Organization: Virginia Grain Producers Association

Address: 2201 West Main Street, Richmond, VA 23220

Virginia Poultry Federation

Organization: Virginia Poultry Federation

Address: 2020 South Main Street, Harrisonburg, VA 22801

Wyoming Ag-Business Association

Organization: Wyoming Ag-Business Association

Address: PO Box 1778, Laramie, WY 82073

Southern Crop Production Association

Organization: Southern Crop Production Association

Address: 129 East Lee Street, Dawson, GA 39842

New York State Agribusiness

Organization: New York State Agribusiness

Address: PO Box 268, Macedon, NY 14502

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-12-000-4112	Alternate Number:	N/A
Status:	For Your Information	Closed Date:	N/A
Due Date:	N/A	# of Extensions:	0
Letter Date:	Mar 1, 2012	Received Date:	Mar 2, 2012
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	SNR-Signature Not Required	Signature Date:	N/A
File Code:	401_127_a General Correspondence Files Record copy		
Subject:	Daily Reading File - Florida Numeric Nutrient Criteria		
Instructions:	For Your Information -- No action required		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	Lawrence Elworth - AO-IO OEAE - Office of External Affairs and Environmental Education R4 - Region 4 -- Immediate Office		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information



Correspondence Management System

Control Number: AX-12-000-4112

Printing Date: March 02, 2012 03:48:15



Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6)	OEX	OW	Mar 2, 2012
(b) (6)	OW	OW-OST	Mar 2, 2012

History

Action By	Office	Action	Date
(b) (6)	OEX	Forward control to OW	Mar 2, 2012
(b) (6)	OW	Forwarded control to OW-OST	Mar 2, 2012

Comments

Commentator	Comment	Date
No Record Found.		

March 1, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Florida Numeric Nutrient Criteria

Dear Administrator Jackson,

The undersigned organizations are all partners and stakeholders committed to addressing nutrient loadings in our nation's waters. We understand the importance of clean water for both our businesses and the communities in which those that work in our industries reside. We are writing you today to urge you to approve the Florida Department of Environmental Protection's (FDEP) Numeric Nutrient Criteria (NNC) rule for Florida and withdraw the rule entitled "*Water Quality Standards for the State of Florida's Lakes and Flowing Waters*" promulgated by your agency in December 2010.

The FDEP NNC rule was **unanimously** approved by the Florida Environmental Regulation Commission (ERC), the Florida Legislature and signed by Governor Rick Scott.

Florida is recognized as a national leader in implementing a sophisticated suite of water quality and technology-based nutrient management programs to protect its water bodies. In fact, FDEP has spent more than \$20 million during the last decade to collect and analyze data related to the concentrations and impacts of nutrients in Florida's water bodies. By utilizing this data and analysis, FDEP has worked tirelessly over the past year to develop scientifically defensible water quality standards. While there will be significant costs associated with these standards, we believe they are technically achievable standards that our members and other stakeholders will be able to meet while working in partnership with the state.

EPA has acknowledged that states must take the lead in addressing nutrients. After all, it is the states that are best suited to deal with issues related to their unique landscapes and climates. As stated in the March 16, 2010, memo entitled "*Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions*," Acting EPA Assistant Administrator Nancy Stoner said, "States need room to innovate and respond to local water quality needs, so a one-size-fits-all solution to nitrogen and phosphorus pollution is neither desirable nor necessary." We wholly agree, and accordingly, we respectfully request that you approve FDEP's NNC rule in its entirety.

Thank you for your time and attention to this important matter.

Sincerely,

Agribusiness Association of Iowa
Agribusiness Council of Indiana
Agricultural Retailers Association
Agrium U.S., Inc.
Alabama Agribusiness Council
American Farm Bureau Federation
American Forest & Paper Association
Associated Builders and Contractors, Inc.
CF Industries
CropLife America
Florida Fertilizer & Agrichemical
Association
Florida Sugar Cane League
Georgia Agribusiness Council
Illinois Fertilizer and Chemical Association
Indiana Plant Food and Agricultural
Chemicals Association
International Raw Materials Ltd.
J.R. Simplot Company
Michigan Agri-Business Association
Mid America Croplife Association
Minnesota Crop Production Retailers
Missouri Agribusiness Association
Montana Agricultural Business Association
National Alliance of Forest Owners
National Association of Manufacturers
National Association of State Departments of
Agriculture

National Cattlemen's Beef Association
National Chicken Council
National Corn Growers Association
National Council of Farmer Cooperatives
National Milk Producers Federation
National Turkey Federation
Nebraska Agri-Business Association
New York State Agribusiness
Ohio AgriBusiness Association
PotashCorp
South Dakota Agri-Business Association
Southern Crop Production Association
The Fertilizer Institute
U.S. Cattlemen's Association
U.S. Chamber of Commerce
United Egg Producers
Virginia Agribusiness Council
Virginia Grain Producers Association
Virginia Poultry Federation
Western Plant Health Association
Wisconsin Crop Production Association
Wyoming Ag-Business Association
Wyoming Farm Bureau Federation

cc: President Barack Obama
Florida Congressional Delegation
Governor Rick Scott
Florida Attorney General Pam Bondi
Florida Commissioner of Agriculture Adam Putnam
Herschel Vinyard, Secretary of the Florida Department of Environmental Protection
Tom Vilsack, Secretary of the U.S. Department of Agriculture

2 non-responsive pages were removed from this file

EPA-451

EPAExecSec

Sent by: Eliska Postell

05/08/2012 04:42 PM

To Aaron Dickerson, Arvin Ganesan, Bicky Corman, Bob Perciasepe, Bob Sussman, Diane Thompson, Eric Wachter, Gladys Stroman, Heidi Ellis, Jose Lozano, Laura Vaught, Michael Goo, Sarah Pallone, Richard Windsor, Stephanie Washington, Christopher Busch, Veronica Burley, Elizabeth Ashwell, Brendan Gilfillan, briefings

cc

bcc

Subject Daily Reading File: Mat 8, 2012



Daily Reading File.5.8.12.pdf



Correspondence Management System

Control Number: AX-12-000-8015

Printing Date: May 08, 2012 01:16:36



Citizen Information

Citizen/Originator: Sedlacek, Mark

Organization: Department of Water and Power the City of Los Angeles

Address: P.O. Box 51111, Los Angeles, CA 90051-5700

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-8015

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: May 22, 2012

of Extensions: 0

Letter Date: Apr 25, 2012

Received Date: May 7, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: Daily Reading File - United States Environmental Protection Agency's Proposed Impingement Mortality (IM) Reduction Schedule under Section 316 (b) of the Clean Water Act - Proposed Regulatory Language

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OEAAE - Office of External Affairs and Environmental Education
OGC - Office of General Counsel -- Immediate Office
R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OW	May 8, 2012	May 22, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Department of Water and Power



the City of Los Angeles

ANTONIO R. VILLARAIGOSA
Mayor

Commission
THOMAS S. SAYLES, *President*
ERIC HOLOMAN, *Vice President*
RICHARD F. MOSS
CHRISTINA E. NOONAN
JONATHAN PARFREY
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS
General Manager

RECEIVED

MAY - 7 2012

OFFICE OF THE
EXECUTIVE SECRETARIAT

April 25, 2012

Mr. Paul Shriner
United States Environmental Protection Agency (USEPA)
Ariel Ross Building
1200 Pennsylvania Ave., N.W.
Mail Code 4303T
Washington, D.C. 20460

Dear Mr. Shriner:

Subject: USEPA's Proposed Impingement Mortality (IM) Reduction Schedule under
Section 316 (b) of the Clean Water Act – Proposed Regulatory Language

Thank you for meeting with Los Angeles Department of Water and Power (LADWP) staff by telephone over the last several months in an attempt to resolve the issues faced by LADWP with the proposed Impingement Mortality (IM) schedule in regards to the installation of closed cycle cooling in order to completely eliminate the use of Once-Through Cooling (OTC) as a means to comply with both the adopted California State wide 316 b Policy and the proposed Federal 316 b rule. On February 14, 2012, at a meeting between LADWP's General Manager, Mr. Ronald O. Nichols and USEPA's Senior Policy Counsel to USEPA Administrator Jackson, Mr. Bob Sussman, this issue was also discussed and it was agreed that an extended schedule beyond 2020 was appropriate for a utility that committed to eliminating OTC with closed cycle cooling based on grid system reliability issues, such as LADWP.

As has been discussed in LADWP's comments submitted in August 2011, previous correspondence, and phone meetings, LADWP has started its plan to strategically and sequentially repower its nine existing OTC units in order to eliminate the use of ocean water without impacting the reliability of its grid system¹. LADWP is a municipal utility required by the Los Angeles City Charter to provide reliable and affordable power to the citizens of Los Angeles. LADWP's transmission system was established and has evolved around the existence of its OTC plants. The internal City transmission system lacks the capacity to import sufficient power from outside its system to serve the western and southern portions of LADWP's service territory where the coastal plants are located. There is no physical space within the utility's territory where these plants can be replaced to reliably deliver power to LADWP customers. The OTC plants are critical to maintaining the utility's system reliability, and provide balance and stability

¹ LADWP letter to EPA dated January 23, 2012.

Water and Power Conservation ...a way of life

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700
Telephone: (213) 367-4211 Cable address: DEWAPOLA

Recyclable and made from recycled waste



Mr. Paul Shriner
April 25, 2012
Page 2

to the entire grid. Located in a transmission "cul-de-sac", the OTC plants provide a local source of power and are the backbone of the Los Angeles power supply.

LADWP cannot shut down the OTC units while replacement units are constructed and meet its responsibility to its customers per the Los Angeles City Charter and the requirements to comply with the North American Electric Reliability (NERC) standards. The schedule to phase out OTC must allow the time required for sequential construction. Repowers with closed cycle cooling require complex "design/build" contracts, in addition, due to limited space at LADWP's facilities, combined with the need to keep existing units in operation while new units are installed, means a lengthier repower process and requires careful demolition. The elements that comprise a generating station are interconnected; old units cannot simply be "unplugged". Gas pipeline connections will have to be re-routed. Extraordinary care must be exercised to ensure that daily operations are not affected, delayed or halted due to demolition activities in order to ensure that there are no interruptions in power generation.

Multiple safety and national security procedures, in concert with physical space constraints, will necessarily impact all phases of construction, from equipment delivery procedures and equipment lay down areas, to daily verification of construction crew identities. Against this background, schedules that are projected at seven to eight years per repower project are impressive. LADWP has to complete six repower projects sequentially in order to maintain reliability while completely eliminating the use of OTC at its three coastal power plants. Three of the repower projects will be completed by 2020. However, to complete the last three repower projects that must be done in succession to maintain reliability, will take LADWP a total of nine years beyond 2020², thus LADWP's schedule will exceed the amount of time currently stipulated in the proposed rule, ie, more than eight to ten years from the scheduled effective date of the Rule, of 2012. As of 2020, LADWP will have completely eliminated OTC at its Scattergood generating station which is located directly on the ocean. In addition, the two largest units at the Haynes generating station will have been repowered with the elimination of OTC. The remaining OTC units located at LADWP's Harbor and Haynes Generating Stations will be as follows: three at the Haynes Generating Station and one at the Harbor Generating Station. Two of these remaining OTC units are units that were repowered prior to the onset of 316(b) efforts and have already achieved significant reduction in flow, Haynes Unit 8 and Harbor Unit 5. When these units, which are later in the sequence for yet another repowering, are replaced, LADWP will have zero use of ocean water for cooling.

LADWP was an early mover in undertaking a comprehensive plan to totally eliminate its once-through ocean cooling. Working with its permitting authority, the California State Water Resources Control Board (SWRCB) for over two years, LADWP has negotiated an extended schedule to achieve this major nine power generation unit replacement effort to be completed by 2029. This schedule was carefully tailored to LADWP's unique system configuration, taking into consideration LADWP's local capacity requirements and reliability of its grid system as described above. It is an aggressive schedule requiring seamless execution predicated upon best case assumptions that is as short as possible. This end date of 2029 is necessary to

² LADWP letter to EPA dated January 23, 2012, Enclosure 2.

Mr. Paul Shriner
April 25, 2012
Page 3

completely eliminate OTC with closed cycle cooling at LADWP's coastal facilities, truncating it would affect system reliability.

In order for LADWP to maintain reliable electric service while achieving the elimination of OTC, it has been assessed in LADWP's 2011 Grid Reliability Report, that the 2012 summer peak scenarios margins indicate that the contribution of just one OTC unit is nothing less than critical. LADWP must maintain various types of reserves and margins required by the NERC. Looking a decade ahead, the minimum generation requirements under one specific high-load scenario emphasizes the need for additional local generation than is expected to be present in 2021, and at this juncture, OTC repowering will continue for another eight years, or until the end of 2029³.

In the preamble of the Proposed Rule (Fed. Reg. 76), it is recognized that there is a need for an extension due to the reliability risk and therefore allows for a maximum of just two years after the compliance deadline date of 2020. As mentioned above, a repower project for LADWP takes on average seven to eight years, and need to be undertaken sequentially. LADWP cannot afford to lose any megawatts (MW) on its grid in order to meet system demand.

In addition to the challenges posed by the conversion away from OTC, by 2020, LADWP must meet equally important regulatory mandates contemporaneous with the elimination of OTC. LADWP is in the process of integrating variable, renewable energy resources (VRES) into its system to meet the State mandate of thirty-three percent renewable power (Renewable Portfolio Standard or RPS) by 2020. In addition LADWP must meet more stringent air quality regulations, reduce climate-change emissions (as per California Assembly Bill 32), and divest – and replace – a portion of LADWP's coal based generation (California Senate Bill 1368), all by 2020. These mandates will also necessitate rate increases, on top of those required for rising fuel and maintenance costs. These mandates also require the in-basin gas-fired generation of LADWP to be operational through all of this transition period.

In the proposed 316 b federal rule preamble it is also stated (page 22185, 3. Other Resources) that it needs to allow flexibility that allows the industry to make practical investment decisions that minimize costs in complying with all of the mandates coming due by 2020, and that the Agency expects to have ample latitude to set requirements and guidelines in ways that can support the States' and industry efforts in pursuing practical and cost-effective and coordinated compliance.

Finally, in the preamble, page 22210, H. Implementation, EPA recognizes that permitting authorities have already required closed cycle cooling and supports the State's efforts and determinations with these decisions.

Therefore, LADWP offers the following regulatory language to allow the permitting authority to set the schedule for both IM and E for those utilities that commit to total elimination of OTC with closed cycle cooling. The suggested language to be inserted into the Final Rule is as follows:

³ LADWP letter to EPA dated January 23, 2012, Enclosure 3.

Mr. Paul Shriner
April 25, 2012
Page 4

Section 125.93 (d) Compliance:

- d) Notwithstanding all of the above, if the utility has opted to completely eliminate the use of ocean water with closed cycle cooling and the Permitting Authority has adopted an Impingement Mortality (IM) and Entrainment (E) schedule based on local grid reliability requirements then the Permitting Authority may set a compliance schedule for both IM and E beyond 8 to 10 years from the effective date of the Rule, as needed, to maintain grid reliability. In addition, should any additional modifications need to be made to the schedule based on grid reliability, the Permitting Authority may make adjustments as needed.**

LADWP appreciates USEPA staff's efforts on its proposed regulation to resolve this important issue of compliance with the IM schedule, and looks forward to continue to work with the agency to finalize a sustainable and environmentally protective final rule.

If you have any questions, please feel free to contact Ms. Katherine Rubin of my staff at (213) 367-0436.

Sincerely,



Mark J. Sedlacek
Director of Environmental Affairs

KR:db

c: Mr. Ron Nichols – LADWP
Ms. Katherine Rubin - LADWP
✓ Ms. Lisa Jackson - USEPA
Mr. Bob Sussman - USEPA



Correspondence Management System

Control Number: AX-12-000-8111

Printing Date: May 08, 2012 02:22:40



Citizen Information

Citizen/Originator: Cimini, Pat

Organization: Southeastern Association of Fire Chiefs

Address: 1101 Marley Street, Conway, SC 29527

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-8111 **Alternate Number:** 800233324527
Status: Pending **Closed Date:** N/A
Due Date: May 22, 2012 **# of Extensions:** 0
Letter Date: May 7, 2012 **Received Date:** May 8, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Exhaust emissions control systems on fire trucks and ambulances.
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OEAE - Office of External Affairs and Environmental Education
R2 - Region 2 -- Immediate Office
R3 - Region 3 - Immediate Office
R4 - Region 4 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6)	OEX	OAR	May 8, 2012	May 22, 2012	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				
(b) (6)	OAR	OAR-OTAQ	May 8, 2012	May 18, 2012	N/A
	Instruction: DX - DIRECT REPLY - - PREPARE RESPONSE FOR THE SIGNATURE OF THE DIVISION DIRECTOR.				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			



Alabama – Florida – Georgia – Kentucky – Mississippi – North Carolina– Puerto Rico
South Carolina – Tennessee – U.S. Virgin Island – Virginia – West Virginia

Southeastern Association of Fire Chiefs

**1101 Marley Street
Conway, SC 29527
843-397-9146**

May 7, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RECEIVED
MAY - 8 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Administrator Jackson:

I represent the Southeastern Association of Fire Chiefs, SEAFC, and I would like to acknowledge that EPA has been listening to our concerns about certain exhaust emissions control systems on fire trucks and ambulances causing serious problems for our emergency responders. Your Office of Transportation and Air Quality has been particularly responsive, and we appreciate the regulatory flexibilities they have been developing for a rule that we believe EPA intends to publish soon. These flexibilities will give emergency vehicle and engine manufacturers the freedom to deploy the fixes we need for our new and in-use emergency vehicles. These fixes are needed to ensure that emergency vehicles' emissions control systems do not adversely affect our ability to respond to emergencies.

The problems we have been experiencing include fire trucks and ambulances being disabled when they are needed most; so we encourage the EPA to expedite its actions to finalize the regulation changes as soon as possible. If we can provide any assistance in helping your agency accomplish this much needed change, we would be happy to contact others at EPA, or conduct another letter campaign to Congress, or assist with any outreach to our 2,200+ members. Please let us know what we can do to help EPA finalize the rule as soon as possible.

We sincerely appreciate the importance that your agency has placed on addressing our concerns so far. At this point we only want to make sure that nothing will stand in the way of EPA finalizing its actions quickly. On behalf of the Board of Directors and our membership we salute the efforts of your Agency, and we look forward to your response.

Respectfully,

Pat Cimini
Executive Director

10 non responsive pages were removed from this file

EXHIBIT E

EPA-296

"Guzy, Gary S."

<(b) (6) Privacy

02/13/2012 08:28 AM

To Bob Perciasepe

cc

bcc

Subject Re: PM 2.5

Thx.

----- Original Message -----

From: Bob Perciasepe [mailto:Perciasepe.Bob@epamail.epa.gov]

Sent: Monday, February 13, 2012 07:26 AM

To: Zichal, Heather R.; Guzy, Gary S.

Subject: PM 2.5

Just FYI

News Headline: States Sue E.P.A. Over Delayed Soot Rules |

Outlet Full Name: New York Times - The

News Text: The Obama administration, already contending with a lawsuit from health and environmental groups arguing that ozone pollution standards are inadequate, now faces another suit over soot.

Eleven states, including New York and California, joined forces on Friday to sue the federal Environmental Protection Agency in federal district court in Manhattan over the agency's delays in tightening air quality standards involving fine particulate matter, or soot, from diesel trucks, buses, power plants and other sources.

In New York City and other urban areas, health officials blame the pollution for increasing the risk of early death, heart attacks and emergency room visits from people with asthma and other illnesses.

Yet the Obama administration faces intense opposition to stricter air quality regulations from Republicans and industry critics who argue that they would drive up energy costs and hurt economic growth. When the E.P.A. postponed revising the soot standards last fall as part of a scheduled review under the federal Clean Air Act, the states decided to sue. (The E.P.A. last revised the standards in 2006.)

New rules are "vitally important to public health,." the suit says.

The states joining the legal action are New York, California, Connecticut, Delaware, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont and Washington.

"Clean air is a public right, and standards that protect it are a necessity," Eric T. Schneiderman, New York State's attorney general, said in a statement. "Every day, air pollution from soot risks the health of more than one-third of Americans, including our most vulnerable -- children, the elderly and the sick. These risks are simply unacceptable."

In a statement, the E.P.A. said it was "continuing to work" on proposing new standards.

Bob Perciasepe
Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

EPA-297

"Zichal, Heather R."

(b) (6) Privacy

02/13/2012 08:32 AM

To Bob Perciasepe

cc

bcc

Subject Re: PM 2.5

Yeah. Folks here not thrilled w Juliets piece.... Sigh.

----- Original Message -----

From: Bob Perciasepe [mailto:Perciasepe.Bob@epamail.epa.gov]

Sent: Monday, February 13, 2012 07:26 AM

To: Zichal, Heather R.; Guzy, Gary S.

Subject: PM 2.5

Just FYI

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In a statement, the E.P.A. said it was "continuing to work" on proposing new standards.

Bob Perciasepe
Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

EPA-298

"Zichal, Heather R."

(b) (6) Privacy

02/13/2012 09:53 AM

To Bob Perciasepe

cc

bcc

Subject RE: PM 2.5

Is this a separate or the same suit as American Lung?

-----Original Message-----

From: Bob Perciasepe [mailto:Perciasepe.Bob@epamail.epa.gov]

Sent: Monday, February 13, 2012 7:27 AM

To: Zichal, Heather R.; Guzy, Gary S.

Subject: PM 2.5

Just FYI

News Headline: States Sue E.P.A. Over Delayed Soot Rules |

Outlet Full Name: New York Times - The

News Text: The Obama administration, already contending with a lawsuit from health and environmental groups arguing that ozone pollution standards are inadequate, now faces another suit over soot.

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In a statement, the E.P.A. said it was "continuing to work" on proposing new standards.

Bob Perciasepe
Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

EPA-299

Bob
Perciasepe/DC/USEPA/US
02/13/2012 10:06 AM

To "Zichal, Heather R."
cc
bcc
Subject RE: PM 2.5

These are the states joining, I believe they will all be joined together.

Bob Perciasepe
Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

----- Original Message -----

From : "Zichal, Heather R." <(b) (6) Privacy >
To : Bob Perciasepe/DC/USEPA/US@EPA
Cc :
Sent on : 02/13/2012 09:53:06 AM
Subject : RE: PM 2.5

Is this a separate or the same suit as American Lung?

-----Original Message-----

From: Bob Perciasepe [mailto:Perciasepe.Bob@epamail.epa.gov]
Sent: Monday, February 13, 2012 7:27 AM
To: Zichal, Heather R.; Guzy, Gary S.
Subject: PM 2.5

Just FYI

News Headline: States Sue E.P.A. Over Delayed Soot Rules |

Outlet Full Name: New York Times - The
News Text: The Obama administration, already contending with a lawsuit from health and environmental groups arguing that ozone pollution standards are inadequate, now faces another suit over soot.

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In a statement, the E.P.A. said it was "continuing to work" on proposing new standards.

Bob Perciasepe
Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

EPA-301

"Zichal, Heather R."

(b) (6) Privacy

02/13/2012 11:44 AM

To Bob Perciasepe

cc

bcc

Subject RE: PM 2.5

Got it. Thanks.

-----Original Message-----

From: Bob Perciasepe [mailto:Perciasepe.Bob@epamail.epa.gov]
Sent: Monday, February 13, 2012 10:07 AM
To: Zichal, Heather R.
Subject: RE: PM 2.5

These are the states joining, I believe they will all be joined together.

Bob Perciasepe
Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

----- Original Message -----

From : "Zichal, Heather R." <(b) (6) Privacy >
To : Bob Perciasepe/DC/USEPA/US@EPA
Cc :
Sent on : 02/13/2012 09:53:06 AM
Subject : RE: PM 2.5

Is this a separate or the same suit as American Lung?

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From: Bob Perciasepe [mailto:Perciasepe.Bob@epamail.epa.gov]
Sent: Monday, February 13, 2012 7:27 AM
To: Zichal, Heather R.; Guzy, Gary S.
Subject: PM 2.5

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Outlet Full Name: New York Times - The
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In a statement, the E.P.A. said it was "continuing to work" on proposing new standards.

Bob Perciasepe
Deputy Administrator
(o) 202 564 4711
(c) (b) (6) Privacy

EXHIBIT F



EPA Classification No.: CIO 2156.0	CIO Approval Date: 12/10/2012
CIO Transmittal No.: 12-009	Review Date: 12/10/2015

*Issued by the EPA Chief Information Officer,
Pursuant to Delegation 1-19, dated July 07, 2005*

Preservation of Separated Personnel's Electronically Stored Information Subject to Litigation Holds

The United States Environmental Protection Agency (EPA) has an obligation to preserve information that may become evidence in a lawsuit.

As set out in this Interim Policy, all electronically stored information (ESI) subject to a litigation hold created or received by EPA personnel who have separated from an employment, contract or grant relationship with EPA must be preserved.

1. PURPOSE

This Interim Policy is designed to ensure the preservation of electronically stored information (ESI), created or received by EPA employees, contractors or grantees with user and email accounts on EPA networks, who have ended their employment, contract or grant with an EPA office, and whose ESI is subject to a litigation hold. In accordance with this policy, procedures will be issued setting out the process to be followed *prior* to an employee's, contractor's or grantee's separation from service with EPA. This Interim Policy also clarifies the requirement of the 2008 Litigation Hold Guidelines (see Section 7, "Related Policies, Standards and Guidance") that "proper arrangements are made for departing employees."

2. SCOPE AND APPLICABILITY

This Policy addresses preservation of separated personnel's ESI subject to litigation holds. It does not address information preservation requirements prescribed by records management requirements, Freedom of Information Act (FOIA) requirements, or other information preservation requirements provided by applicable statutes or regulations.

3. AUDIENCE

All EPA employees, contractors and grantees with user and email accounts on EPA networks.

4. BACKGROUND

EPA Classification No.: CIO 2156.0	CIO Approval Date: 12/10/2012
CIO Transmittal No.: 12-009	Review Date: 12/10/2015

In today's world of technology and electronic communications, government agencies must pay increasing attention to the preservation of evidence that may be relevant to reasonably anticipated or existing litigation. The need to respond both accurately and appropriately to discovery and other information requests is critical to EPA's ability to meet its legal obligations. EPA recognizes these legal obligations, and in a timely manner will preserve separated personnel's ESI when it is subject to a litigation hold.

5. AUTHORITY

Statutes

- **Clinger-Cohen Act of 1996, Pub. L. No. 104-106.** The Act provides EPA's Chief Information Officer (CIO) responsibility for "developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the executive agency" (Sec. 5125(b)(2)) and "promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency" (Sec. 5125(b)(3)).
- **Government Paperwork Elimination Act (GPEA) of 1998, Pub. L. No. 105-277.** This Act requires federal agencies to provide electronic reporting options to regulated entities.
- **E-Government Act of 2002, Pub. L. No. 107-347.** This Act is designed to enhance the management and promotion of electronic government services and processes.

Rules

- **Federal Rules of Civil Procedure**
- **Federal Rules of Criminal Procedure**

Guidance

- **OMB Circular A-123 – "Management's Responsibility for Internal Control" (2004).** This Circular provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal control.
- **OMB Circular A-130, "Management of Federal Information Resources" (1996).** This Circular clarifies the requirements of the Clinger-Cohen Act and requires agencies to "use electronic collection techniques where such techniques can reduce burden on the public, increase the efficiency of government programs, reduce costs to the government and the public, and/or provide better service to the public" (Sec. 8(l)(3)).

EPA Classification No.: CIO 2185.0	CIO Approval Date: 10-01-12
CIO Transmittal No.: 12-006	Review Date: 10-01-15

EPA Classification No.: CIO 2156.0	CIO Approval Date: 12/10/2012
CIO Transmittal No.: 12-009	Review Date: 12/10/2015

6. POLICY

I – Separated Custodians’ ESI Must be Preserved

- 1) ESI subject to a litigation hold must be preserved, whether the custodian of such ESI is current EPA personnel or has separated from service with EPA.
- 2) The Office of Environmental Information (OEI), each Regional office, Office of Enforcement and Compliance Assurance (OECA), and Office of General Counsel (OGC) will work together to ensure that separated custodians’ ESI is preserved.
- 3) This requirement is effective immediately.

II – Separated Custodians’ ESI Must be Accessible

- 1) Separated custodians’ ESI must be accessible to case attorneys and other appropriate personnel for them to meet their discovery obligations for current or reasonably anticipated litigation.
- 2) This requirement is effective immediately.

III – EPA Will Employ Its Standard Litigation Hold eDiscovery Software Tool to Manage Agency Litigation Holds and Custodians

- 1) EPA will employ its standard ediscovery litigation hold software tool to generate and manage a list of all litigation holds (including those issued prior to this Policy’s issuance) and custodians whose ESI is subject to a litigation hold.
- 2) The list of custodians contained in EPA’s standard ediscovery litigation hold software tool will include separated personnel who are custodians of ESI subject to litigation holds.
- 3) This requirement will become effective upon the completion of the migration of all litigation holds into EPA’s standard ediscovery litigation hold software tool.

IV – EPA Will Employ Its Standard eDiscovery Litigation Hold Software Tool to Identify Separated Custodians

- 1) Using EPA’s standard ediscovery litigation hold software tool, EPA will identify separated personnel who are custodians of ESI subject to litigation holds.
- 2) This requirement will become effective upon the completion of the migration of all litigation holds into EPA’s standard ediscovery litigation hold software tool.

V – Preservation Requirements for Separated Personnel’s ESI

- 1) For purposes of litigation holds, only the ESI of separated personnel whose names appear on the current list of custodians must be preserved.
- 2) This Policy does not address information preservation requirements prescribed by records management requirements, FOIA requirements, or other information preservation requirements provided by applicable statutes or regulations, including the need to preserve ESI in conjunction with a criminal proceeding.

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This requirement will become effective upon the completion of the migration of all litigation holds into EPA's standard ediscovery litigation hold software tool.

7. RELATED DOCUMENTS

- None.
-

8. ROLES AND RESPONSIBILITIES

Office of Enforcement and Compliance Assurance Principal Deputy Assistant Administrator

- Accountable for populating the EPA's standard ediscovery litigation hold software tool with litigation holds, custodians associated with each litigation hold, identification of separated custodians, and continuous updating of litigation hold database.

Office of Environmental Information

- Accountable for working with Regional offices, the Office of Enforcement and Compliance Assurance (OECA), and the Office of General Counsel (OGC) to ensure that separated custodians' ESI is preserved.

Office of General Counsel Principal Deputy General Counsel

- Accountable for populating EPA's standard ediscovery litigation hold software tool with litigation holds, custodians associated with each litigation hold, identification of separated custodians, and continuous updating of litigation hold database.

Regional Counsels

- Accountable for populating EPA's standard ediscovery litigation hold software tool with litigation holds, custodians associated with each litigation hold, identification of separated custodians, and continuous updating of litigation hold database.
-

9. DEFINITIONS

Contractor: A private entity with a formal legally binding agreement, procured for a specific period, to perform duties or to act on behalf of an official agent of the Federal government.

Custodian: EPA personnel who currently or formerly had possession, control or custody of ESI subject to a litigation hold.

Discovery: Pre-trial devices used by one party to obtain facts and information about a case from the other party to assist in preparation for trial.

Employee: EPA management and staff (including temporary staff such as student interns and law clerks) with user and email accounts on EPA networks.

EPA Networks: Computers, servers, external drives and any other electronic information storage devices or systems where ESI can be stored, and which has been purchased or leased by EPA for

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EPA's use.

EPA Personnel: EPA employees (including students such as law clerks and interns), contractors or grantees with user and email accounts on EPA networks.

ESI: Electronically Stored Information, which includes, but is not limited to, email messages, voicemail messages, instant messaging dialogues, conference call transcripts, word processing documents, spreadsheets, personal and shared calendars, information contained in computer databases, digital photographs, and related metadata for all of these types of ESI.

Grantee: Program participant of a cooperative agreement or grant which an organization has with EPA.

Separated Custodian: Separated personnel who had possession, control or custody of ESI subject to a litigation hold.

Separated Personnel: Employees, contractors or grantees with user and email accounts on EPA networks, who no longer are employed by or have a grant relationship with an EPA office, whether by retirement; permanent transfer to another federal agency, public or private organization; or any other situation in which an employment or grant relationship is severed.

Separation: Permanent severing of employment or contractor /grantee relationship, whether by retirement; permanent transfer to another EPA organization; permanent transfer to another federal agency, public or private organization; or any other situation in which an employment or contract/grant relationship is severed.

10. WAIVERS

In the event of circumstances such as a court order to deviate from this policy, this policy will not apply. All such departures from this policy must be documented with justification for the departure.

11. RELATED POLICIES, STANDARDS AND GUIDANCE

- EPA Order 3110.5A – Clearance Procedure for Employees Separating or Transferring from EPA
- Memorandum from Associate Attorney General Thomas Perrelli, “Electronic Discovery Follow-up,” March 9, 2012
- Memorandum from Catherine McCabe and Brenda Mallory, “Obligation to Preserve Information That May Be Relevant in Litigation,” July 26, 2010
- Memorandum from Associate Attorney General Thomas Perrelli, “Electronic Discovery,” July 2, 2010
- Memorandum from OECA Principal Deputy Assistant Administrator Catherine McCabe and OGC Principal Deputy General Counsel Patricia Hirsch, “Transmittal of Litigation Hold Guidelines,” December 16, 2008

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- United States Attorneys Bulletin on Electronic Discovery, May 2008, Volume 56, No. 3. (http://www.justice.gov/usao/eousa/foia_reading_room/usab5603.pdf)
- Memorandum from Acting Associate Attorney General, "Electronic Discovery and the Preservation Obligation," July 19, 2007

12. MATERIAL SUPERSEDED

Interim Policy - Preservation of Separated Personnel's Electronically Stored Information Subject to Litigation Holds, CIO Number 2185.0 Dated 10/01/2012.

13. ADDITIONAL INFORMATION

For further information, please contact the Records and Content Management Branch, Collection Strategies Division, Office of Information Collection, Office of Environmental Information.



*Malcolm D. Jackson, Assistant Administrator
and Chief Information Officer
Office of Environmental Information*

EXHIBIT G

managing the Administrator's and Deputy Administrator's executive correspondence; and administering the EPA's electronic correspondence tracking system. During my time as OEX director I served as vice chair of the Council of Federal Executive Secretariats in 2011 and as chair of the Council in 2012.

3. On May 15, 2013, I executed a declaration in support of the EPA's Motion for Summary Judgment in the above-captioned FOIA case filed by Plaintiff, Landmark Legal Foundation. I have reviewed Plaintiff's Opposition to Defendant's Motion for Summary Judgment and make this supplemental declaration in further support of the EPA's Motion for Summary Judgment. The purpose of this supplemental declaration is to provide additional information regarding the EPA's interpretation of the scope of Plaintiff's FOIA request, EPA's approach in searching for responsive records, and to provide additional information relevant to the EPA's decisions to withhold certain documents or portions of documents responsive to the FOIA request.

4. My statements in this supplemental declaration are based on information provided to me by employees under my supervision at the time, information obtained by me in performance of my official duties, and my personal examination of withheld documents.

I. THE EPA'S SEARCH PROCESS

5. On August 20, 2012, the EPA received a FOIA request from Matthew C. Forys with the Landmark Legal Foundation. This FOIA request was dated August 17, 2012.

6. In its August 17, 2012, FOIA request, Plaintiff sought:

- Any and all records identifying the names of individuals, groups, and/or organizations outside the EPA with which the EPA, EPA employees, EPA contractors and / or EPA consultants have had communications of any kind relating to all proposed rules and regulations that have not been finalized by the EPA between January 1, 2012 [sic] and August 17, 2012. For purposes of this

request, 'communications of any kind' does not include public comments or other records available on the rulemaking docket; and

- Any and all records indicating an order, direction, or suggestion that the issuance of regulations, the announcements of regulations and/or public comment of regulations should be slowed or delayed until after November 2012 or the presidential elections of 2012.

Plaintiff also sought expedited processing and a waiver of all fees associated with processing this request. On August 21, 2012, the EPA's National FOIA Office sent a letter to Plaintiff acknowledging receipt of this request and providing the request's tracking number, HQ-FOI-01861-12. The request was then assigned to the Office of the Executive Secretariat.

7. My office was notified on August 29, 2012, that the EPA's National FOIA Officer sent a letter to Plaintiff granting the request for a fee waiver but denying the request for expedited processing. The letter stated that the EPA would respond to this request as expeditiously as possible. A true and correct copy of this letter is attached to this declaration as Exhibit A. Plaintiff then filed an administrative appeal, dated September 14, 2012, and received by the Office of General Counsel on September 19, 2012, challenging the denial of its request for expediting processing.

8. After several days of internal discussion regarding the breadth of the EPA's rulemaking process and the volume of records generated by that process, Jonathan V. Newton, an attorney under my supervision in the Office of the Executive Secretariat, contacted Plaintiff on September 27, 2012, by telephone to discuss the complexity of this request and options for narrowing the scope. This discussion was necessary because the request, as written, could potentially apply to more than 17,000 EPA employees, located in the Office of the Administrator, the 12 other EPA Headquarters program offices, and each of the EPA's Regional Offices.

9. On September 28, 2012, Mr. Newton attempted, without success, to follow up with Plaintiff regarding the request. By exchange of email with Mr. Newton on October 5, 2012, Mr. Forsy, on behalf of Plaintiff, agreed to narrow the scope of the request to “senior officials” in the EPA’s Headquarters offices, with senior officials being identified as program administrators, deputy administrators and chiefs of staff in the EPA’s Headquarters offices. My office interpreted the narrowed scope of this FOIA request to include the Administrator, Deputy Administrator, and Chief of Staff in the Office of the Administrator. The Administrator, Deputy Administrator, and Chief of Staff in the Office of the Administrator were included under the definition of “program administrators, deputy administrators, and Chiefs of Staff.”

10. *Structure and Organization of the EPA Headquarters Offices.* The EPA Headquarters is divided into 13 offices. These offices are the Office of the Administrator (OA), the Office of Administration and Resources Management (OARM), the Office of Air and Radiation (OAR), the Office of the Chief Financial Officer (OCFO), the Office of Chemical Safety and Pollution Prevention (OCSPP), the Office of Enforcement and Compliance Assurance (OECA), the Office of Environmental Information (OEI), the Office of General Counsel (OGC), the Office of International and Tribal Affairs (OITA), the Office of Research and Development (ORD), the Office of Solid Waste and Emergency Response (OSWER), and the Office of Water (OW) as well as the Office of the Inspector General (OIG). Each Office, with the exceptions of the Office of the Administrator, the Office of General Counsel, the Office of the Chief Financial Officer, and the Office of the Inspector General, is headed by an “Assistant Administrator” and Deputy Assistant Administrators. The Office of General Counsel is headed by the General Counsel. The Office of the Chief Financial Officer is headed by the Chief Financial Officer. The Office of the Inspector General is headed by the Inspector General. The Office of the

Administrator is headed by the Administrator and Deputy Administrator. The Office of the Inspector General processes FOIA requests made to the OIG independently and separately from the process for Headquarters offices and regional offices in the Agency.

11. Offices within the EPA Headquarters are habitually referred to across the Agency as “program offices.” For purposes of this Declaration, “program offices” refers to Headquarters offices other than the Office of the Administrator and the Office of the Inspector General. The offices of the senior officials within each program office are referred to as the “immediate offices” for that program. The offices of senior officials such as the Administrator and Deputy Administrator in the Office of the Administrator are referred to as the “Immediate Office” of the Office of the Administrator.

12. *Role of the FOIA Coordinators.* The Agency has eleven FOIA offices, one for Headquarters and one for each of the EPA’s 10 regional offices. The FOIA process officially begins when a request is received in the Headquarters FOIA office or in one of the Agency’s 10 regional FOIA Offices. The Headquarters FOIA Office or Regional FOIA Office will assign the request to the primary FOIA Coordinator in the program or regional office believed to most likely house responsive records. FOIA Coordinators route requests to the appropriate program office or subject matter expert within the program; track FOIA requests for timeliness; monitor the quality of the responses; and provide guidance to program personnel including overdue reports, in collaboration with the National FOIA Officer (NFO). Each HQ Program Office has a lead FOIA coordinator, who works under the general direction of the NFO. Jonathan Newton is the FOIA Coordinator for the Office of the Administrator and is responsible for coordinating searches for responsive records from the Office of the Administrator.

13. *Role of the Office of the Executive Secretariat ("OEX") as Lead Office.* My office (OEX) was assigned by the NFO as the lead office for coordinating the response to Plaintiff's request. My office began processing Plaintiff's FOIA request, as narrowed by agreement, on October 23, 2012. As noted above, the request entailed the search and collection of records from each of the 12 program offices (excluding the OIG) in the EPA's Headquarters. Jonathan Newton, an employee under my supervision in the Office of the Executive Secretariat and the FOIA Coordinator for the Office of the Administrator, was responsible for initiating the collection and review of documents from across the Agency to respond to Plaintiff's request.

14. *The EPA's Search for Responsive Records.* In order to begin the search for records, my office determined that responsive documents may be located within the Immediate Office of the Office of the Administrator. My office also determined that responsive documents may be located outside of the Immediate Office of the Office of the Administrator in the offices of the Assistant Administrators, Deputy Assistant Administrators, and Chiefs of Staff in EPA Headquarters offices, as well as in the offices of the Associate Administrator and Deputy Associate Administrator in the EPA's Office of Policy ("OP"). The OP is the primary EPA office that works to support Agency priorities and enhance decisionmaking through analytic skills, management support, and special expertise in four areas: regulatory policy and management, environmental economics, strategic environmental management, and sustainable communities. The search for responsive documents also included the General Counsel and Deputy General Counsels in the EPA's Office of General Counsel ("OGC"). The OGC is the chief legal advisor to EPA, providing legal support for developing and defending the Agency's rules, adjudications, and policies and advising as to legislation.

15. On October 23, 2012, an electronic mail message initiating the search was sent by Mr. Newton in OEX to the designated FOIA Coordinators for each of the EPA's headquarters offices, with the exception of the Office of the Administrator. As described in Paragraph 12, the FOIA Coordinators are responsible for directing FOIA requests to the individuals in the program offices who are likely to have responsive records. As previously stated, Mr. Newton in my office is the FOIA Coordinator for the Office of the Administrator and was responsible for coordinating the search for responsive documents from the Office of the Administrator. The message to the program office FOIA Coordinators described Plaintiff's request in the "Request Description" as follows:

Request Description:

- Records relating to proposed rules or regulations that have not been finalized by the EPA between January 1, 2012 and August 17, 2012.
- Records reflecting an order, direction or suggestion, that regulations (or comments on regulations) should be delayed until after November 2012.
- Note: This request has been modified. The search only applies to assistant administrators, deputy assistant administrators and chiefs of staff in EPA headquarters.**
The search will also include the associate administrator and deputy associate administrator(s) for the Office of Policy.

Because this communication was sent by the FOIA Coordinator in the Office of the Administrator to FOIA Coordinators in program offices outside of the immediate office of the Office of the Administrator, it did not refer to the Administrator, Deputy Administrator, and Chief of Staff of the Office of the Administrator. However, Mr. Newton communicated with staff in the Office of the Administrator regarding this FOIA request through a separate email communication. See Paragraph 17.

16. In order to process and collect responsive documents, technical staff in the Office of the Administrator created an electronic database using the agency's Lotus Notes software for individuals to use to upload responsive electronic records. On October 25, 2012, my staff sent

an additional communication to the FOIA Coordinators marked as an "Update and FAQ" regarding the search request. In this communication OEX provided a link to a records collection database and instructed individuals to upload potentially responsive information into the database. My staff instructed individuals to search based on the overall request as well as by key words, instructing:

- There will not be an "automated search" for this request. However, potential key words for a manual search could include: "draft or proposed" within the same sentence as "rule, regulation or policy." Those suggestions are not meant to be exhaustive. The original request elaborates upon the records that are sought.

Due to the broad and unfocused nature of the request, the decision was made to instruct offices to search based on the request rather than strictly by key words. This was because precise key words could not be readily developed that would be narrowly tailored to find documents responsive to the plaintiff's request, as the request was not focused on a particular topic, rule, particular third party, or other issue amenable to a search limited by key words. Each headquarters office was individually responsible for uploading their responsive documents to the collection database.

17. *Initial request for responsive documents from the Office of the Administrator:* On November 14, 2012, Mr. Newton sent an email to Aaron Dickerson and Nena Shaw in the Office of the Administrator, forwarding the instructions that were sent to the FOIA coordinators for the other program offices on October 23, 2012, and the link to the collection database. This email communication instructed Mr. Dickerson and Ms. Shaw to search for records responsive to the request from the email accounts of the Administrator and Deputy Administrator, respectively, and to upload any responsive records into the collection database.

18. As I stated in my May 15, 2013, Declaration, the initial document collection was closed on January 25, 2013. At that point my office had either received a no-records response or

had coordinated the collection of documents from the Immediate Office of the Office of the Administrator and from Assistant Administrators, Deputy Assistant Administrators, and Chiefs of Staff in the EPA's Office of Water (OW), Office of Air and Radiation (OAR), Office of Solid Waste and Emergency Response (OSWER), Office of Chemical Safety and Pollution Prevention (OSCPP), Office of Enforcement and Compliance Assurance (OECA), and Office of General Counsel, as well as documents from the associate administrator and deputy associate administrator in the EPA's Office of Policy.

19. *Initial Processing of Responsive Records.* As of January 25, 2013, the EPA had completed its initial search for records responsive to this FOIA request and identified more than 4,600 potentially responsive documents. OEX staff and OGC staff then reviewed and processed these documents for responsiveness to Plaintiff's FOIA request and for any applicable privileges. Records were deemed to be responsive to the Plaintiff's FOIA request if they either 1) memorialized a meeting, communication with, or contact with an outside party related to a rule that was proposed, but not finalized, during the time frame identified by Plaintiff (not including standard interagency review of proposed rules or formal comments on rulemaking dockets) or 2) internal or external records from any party that discussed or memorialized discussions of delaying a rulemaking until after the election of 2012 or after November 2012 for political reasons.

20. *Segregating Non-Exempt Material.* OEX staff and OGC staff also evaluated each record responsive to this FOIA request for segregability of non-exempt material. The staff determined that where a record was withheld in its entirety, no meaningful portion could reasonably be released. The staff members performed redactions where non-exempt material could be reasonably segregated and released non-exempt portions.

21. *The EPA's Supplemental Search for and Collection of Potentially Responsive Records from the Immediate Office of the Office of the Administrator.* As part of finalizing the documents for the Court's April 30, 2013, filing deadline, my office carefully reviewed the document search that was performed between October 23, 2012, and January 25, 2013. In the course of this review, on April 29, 2013, my office determined that the search for documents from the former Administrator, the Deputy Administrator, and the Chief of Staff in the Office of the Administrator may have been insufficient. In the interest of a complete and adequate response to Plaintiff's request, the EPA determined that another search would be required of the accounts of the former Administrator, Deputy Administrator, and Chief of Staff in the Office of the Administrator. The EPA immediately notified plaintiff and the Court of this deficiency and that there would be a number of additional documents that may potentially be responsive to the Plaintiff's request.

22. To start this supplemental search, staff in the Office of the Administrator were instructed by electronic mail to immediately complete a new search of the accounts of the former Administrator, the Deputy Administrator, and the Chief of Staff using the keywords "draft or proposed" within the same sentence as "rule, regulation, or guidance" for the time period of January 1, 2012, to August 21, 2012. This very broad and inclusive search was to verify that all documents related to a draft or proposed rule were collected so that they could be reviewed by my staff and OGC staff to determine which of these documents were actually responsive to plaintiff's request.

23. In addition to the 4,600 documents that were initially identified as potentially responsive, approximately 4,500 additional documents were found during searches in the Office of the Administrator conducted April 30, 2013, to May 3, 2013, from the files of the former

Administrator, the Deputy Administrator, and the Chief of Staff. These additional potentially responsive documents contained the broad key words “draft or proposed” within the same sentence as “rule, regulation, or, guidance.” OEX staff and OGC staff then reviewed and processed these documents for responsiveness to Plaintiff’s FOIA request and for any applicable privileges. Records were deemed to be responsive to the Plaintiff’s FOIA request if they either 1) memorialized a meeting, communication with, or contact with an outside party related to a rule that was proposed, but not finalized, during the time frame identified by Plaintiff (not including standard interagency review of proposed rules or formal comments on rulemaking dockets) or 2) internal or external records from any party that discussed or memorialized discussions of delaying a rulemaking until after the election of 2012 or after November 2012 for political reasons. With the addition of these 4,500 additional documents, more than 9,100 potentially responsive documents from across the agency were reviewed and processed by my staff and OGC staff to process Plaintiff’s FOIA request.

24. *Segregating non-exempt material.* OEX staff and OGC staff also evaluated each additional record responsive to this FOIA request for segregability of non-exempt material. The staff determined that where a record was withheld in its entirety, no meaningful portion could reasonably be released. The staff members performed redactions where non-exempt material could be reasonably segregated and released non-exempt portions.

25. *Filing System and Files Subject to Search.* As stated above and in my May 15, 2013, Declaration in support of the EPA’s Motion for Summary Judgment, my staff provided a link to a Lotus Notes records collection database and instructed individuals to upload potentially responsive information into the database. My staff instructed individuals to search based on the overall request, which was for records of “communications of any kind relating to all proposed

rules and regulations that have not been finalized by the EPA between January 1, 2012 [sic] and August 17, 2012” and for “records indicating an order, direction, or suggestion that the issuance of regulations, the announcements of regulations and/or public comment of regulations should be slowed or delayed until after November 2012 or the presidential elections of 2012.” Each program office was individually responsible for uploading their responsive documents to the collection database.

Documents uploaded into the database for processing and review as of May 15, 2013, included the following:

a. *Internal Lotus Notes Email System.* During the time period of January 2012 to August 2012, which is the time period specified in Plaintiff’s FOIA request, the EPA used Lotus Notes as its exclusive email application throughout the Agency. The Lotus Notes email application allows users to search for responsive records in all folders contained in mail servers and archived servers, and then upload the potentially responsive records into collection databases.

b. *Lotus Notes Email Messages Received from Outside Parties or Non-Agency Accounts.* Messages received from outside parties or outside email accounts to EPA email accounts during the time period of this request are contained in these EPA mail servers and archived servers. Responsive communications with outside parties were searched for and located as part of the search for records responsive to this request. The EPA provided responsive records to Plaintiff containing communications with outside parties. Exhibit B contains examples of records of communications to and from outside parties with the EPA. Many of these documents were released in full to Plaintiff and were therefore not numbered or referenced on the EPA’s *Vaughn* Index. Document EPA – 32, containing an unsolicited email communication received by Deputy Administrator Bob Perciasepe, is another example of an email communication from an outside

account. This communication was forwarded to Mr. Perciasepe's executive assistant, Teri Porterfield, and was located in the EPA's Lotus Notes email system as part of EPA's search for responsive records.

c. Lotus Notes Email Records from the Secondary Account of Former Administrator Lisa P. Jackson. As I stated in my May 15, 2013, Declaration, since the widespread use of email has become commonplace, EPA Administrators have been assigned two email accounts: a primary account and a secondary account. The email address for Administrator Jackson's primary account was posted on the EPA's website and was used by hundreds of thousands of Americans to send messages to the Administrator. This account was maintained and monitored by staff, and the emails were processed as official correspondence as appropriate. The secondary account was an everyday, working email account of the Administrator to communicate with staff and other government officials. This secondary email account was used for practical purposes. Given the large volume of emails sent to the primary account – more than 1.5 million in fiscal year 2012, for instance – the secondary email account was necessary for effective management and communication between the Administrator and colleagues.

In accordance with the EPA's practice for responding to FOIA requests for documents from the email account of the Administrator, the EPA searched this secondary account and provided responsive records from this secondary account. My office is aware of no other secondary EPA email accounts of senior officials within the Agency during the time period of Plaintiff's request.

d. Calendar Entries memorializing meetings with outside parties. Calendar entries on the EPA's official calendars are also contained in the Lotus Notes application. EPA provided records of calendar entries memorializing meetings with outside parties related to rules that were

proposed but not finalized during the time period covered by Plaintiff's FOIA request. Exhibit C contains examples of these calendar entries that were provided to Plaintiff.

e. *Electronic Attachments to Email Files.* Many of the documents uploaded into the database contained attachments to email files in the form of Microsoft Word documents, Adobe Acrobat .PDF form documents, and Microsoft Excel spreadsheets. These attachments were also reviewed for responsiveness to Plaintiff's FOIA request and for any applicable exemptions. Many responsive records contained attachments that included memoranda, internal planning documents, drafts of correspondence, and final correspondence related to rules proposed but not finalized during the time period of Plaintiff's request.

f. *Correspondence stored in the EPA's Correspondence Management System ("CMS") and contained in "Daily Reading Files."* The EPA also provided outside correspondence that was received by the EPA and reviewed by the executive correspondence team in OEX. The executive correspondence team processes correspondence for the Administrator and Deputy Administrator and is responsible for managing and tracking correspondence in CMS. EPA senior managers, including the Administrator and Deputy Administrator, do not directly review all correspondence they receive. Instead, staff on the OEX correspondence team prepares "Daily Reading Files" of correspondence for senior managers to review. My office determined that these Daily Reading Files prepared by staff were the records likely to have information responsive to the narrowed scope of Plaintiff's request. The EPA provided the pages and correspondence from Daily Reading Files responsive to Plaintiff's request. Exhibit D provides examples of these Daily Reading Files, which include responsive correspondence from the CMS system.

26. *Locations likely to have responsive records.* My office determined that the records described above constitute the records likely to contain responsive information to Plaintiff's request for records of "communications of any kind relating to all proposed rules and regulations that have not been finalized by the EPA between January 1, 2012 [sic] and August 17, 2012" and for "records indicating an order, direction, or suggestion that the issuance of regulations, the announcements of regulations and/or public comment of regulations should be slowed or delayed until after November 2012 or the presidential elections of 2012." Therefore, as of May 15, 2013, my office determined that all locations reasonably likely to contain responsive records had been searched.

II. VAUGHN INDEX AND WITHHELD DOCUMENTS

27. *Deliberative Process Privilege and Exemption 5.* The EPA withheld approximately 399 documents, in full or in part, from disclosure under FOIA Exemption 5 and the deliberative process privilege. The documents withheld under the deliberative process privilege and FOIA Exemption 5 comprise email chain discussions, draft versions of documents, briefing materials, and internal briefing memoranda that pertain to myriad EPA decision-making processes related to rulemaking and proposed rules. The attached *Vaughn* index provides a detailed description of each document or portion of a document withheld under the deliberative process privilege and FOIA Exemption 5.

28. *Providing Details of Each Sample Vaughn Record.* In completing the sample *Vaughn* index, the EPA ensured that each of its 399 records provided sufficient detail for each particular record without releasing the deliberative content. *See Vaughn Index, Exhibit A to EPA Motion for Summary Judgment.*

29. *Pre-decisional Intra- and Inter-agency Records.* As demonstrated in the October 7 Declaration and the EPA's sample *Vaughn* index, all records withheld under the deliberative process privilege and Exemption 5 of FOIA were created prior to the finalization of Agency decisions and comprised of intra- or interagency records. *See Vaughn Index.* The withheld records were prepared in connection with developing Agency rulemaking actions that, by the terms of Plaintiff's FOIA request, were not final at the time that the records were prepared. Therefore these records are pre-decisional intra- and interagency records generally developed as part of the Agency's decision-making process related to proposed rules and proposed rulemaking. Specifically, with regard to document EPA-421, the document discusses potential issues with the application of a rule known as the greenhouse gas tailoring rule to a facility and lays out several pre-decisional options for consideration related to the potential application of this rule.

30. *The EPA's Use of Exemption 6 for Email Addresses from the Executive Office of the President.* Exhibit E, containing documents EPA-296, EPA-297, EPA-298, EPA-299 and EPA-301, provides examples of how EPA withheld official email addresses of the Executive Office of the President under Exemption 6. The Executive Office of the President's staff members have a significant personal interest in preventing the burden of unsolicited emails and harassment. The email addresses are used for internal messages to and from the Executive Office of the President to prevent unsolicited communications. Since the owners' names are already disclosed, public disclosure of these email addresses would not shed light on the performance of the employees' official duties. As Exhibit E demonstrates, when EPA withheld email addresses under Exemption 6, the Agency also provided the email owner's name in the

redaction or the redaction directly followed the owner's name. Thus, there is no confusion as to who received or sent the email communications.

III. THE EPA'S PRESERVATION OF RESPONSIVE RECORDS

31. On October 23, 2012, certain EPA staff, including OEX staff, was sent a litigation hold notice issued by an Attorney-Advisor in the EPA's Office of General Counsel advising that all information responsive to this FOIA request must be preserved. The hold notice was sent through the Encase Litigation Hold Module, which is the electronic tool that EPA now uses to issue all litigation holds. I certified that I read and understood the meaning and scope of the litigation hold notice, and that I would comply to the best of my ability with the EPA's obligation to preserve information relevant to this FOIA litigation. I have also instructed my staff to comply with all preservation obligations for relevant information concerning this FOIA request and FOIA litigation.


32. My staff and I are also aware of our obligation to preserve records under the Federal Records Act as well as the obligation to preserve information that is responsive to a FOIA request. Additionally, my staff and I are familiar with and understand the EPA's Interim Policy, "Preservation of Separated Personnel's Electronically Stored Information Subject to Litigation Holds." My staff and I understand that this obligation includes an obligation to preserve the records from individuals who have since separated from the Agency, including any secondary EPA email accounts used by those individuals during their tenure at the Agency. A true and correct copy of this policy is attached as Exhibit F.

33. Following Administrator Jackson's departure, Office of the Administrator staff retained and searched her records, including the secondary email account, as part of the supplemental search for records from the former Administrator, the Deputy Administrator, and

the Chief of Staff. To the best of my knowledge no records were or have been deleted from these accounts following the former Administrator's departure from the Agency.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the forgoing declaration is true and correct.

Executed in the District of Columbia this 24th day of July, 2013.

A handwritten signature in black ink, appearing to read "Eric E. Wachter", with a long horizontal flourish extending to the right.

Eric E. Wachter
Director, Office of the Executive Secretariat
Office of the Administrator
U.S. Environmental Protection Agency